



ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 57

DATE: Wednesday, November 9th, 1988

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

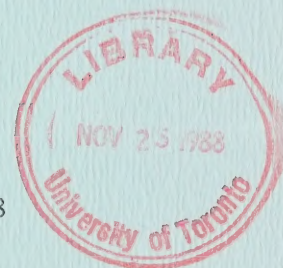
A. KOVEN, Member


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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Wednesday, November 9th,
1988, commencing at 9:00 a.m.

VOLUME 57

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	
MS. C. BLASTORAH)	MINISTRY OF NATURAL
MS. K. MURPHY)	RESOURCES
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	MINISTRY OF ENVIRONMENT
MS. J. SEABORN)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
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MR. D. HUNTER	NISHNAWBE-ASKI NATION
	and WINDIGO TRIBAL COUNCIL
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MR. B. McKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	

APPEARANCES: (Cont'd)

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MR. D. SCOTT) MR. J.S. TAYLOR)	NORTHWESTERN ONTARIO ASSOCIATED CHAMBERS OF COMMERCE
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MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON

(iii)

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

Witness:

CAMERON CLARK,
FRANK KENNEDY,
JOHN McNICOL,
JOSEPH BEECHEY,
NEVILLE WARD,
GORDON PYZER, Resumed 9621

Cross-Examination by Mr. Williams 9621

I N D E X O F E X H I B I T S

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1 ---Upon commencing at 9:05 a.m.

2 THE CHAIRMAN: Good morning. Be seated,
3 please.

4 Whenever you are ready, Mr. Williams.

5 MR. WILLIAMS: Thank you, Mr. Chairman.

6 CAMERON CLARK,
7 FRANK KENNEDY,
8 JOHN McNICOL,
9 JOSEPH BEECHEY,
10 NEVILLE WARD,
11 GORDON PYZER, Resumed

12 CROSS-EXAMINATION BY MR. WILLIAMS:

13 Q. Mr. Clark, why, in your opinion, were
14 you asked to appear as a witness on this panel?

15 MR. CLARK: A. Well, I think it has got
16 something to do with my background. I think if you
17 refer back to my CV, my working experience extends over
18 a fairly wide area geographically.

19 I have been involved in a number of jobs
20 that involve both line responsibility and a staff
21 function, and I think because of -- and in all of them,
22 I have had considerable involvement in what I would
23 refer to as the IRM orientation of the Ministry and, in
24 particular, conflict resolution.

25 And I believe that that has allowed me to
become fairly familiar with a lot of the issues that
relate to data collection, its use and the whole issue

1 of decisions that relate to its adequacy which is
2 really what the focus of my evidence was all about.

3 Q. Are there other Ministry of Natural
4 Resource policy officers for northern Ontario, or are
5 you it?

6 A. Well, my position is, in a sense
7 unique. There is only one northern Ontario policy
8 officer. There are a variety of other policy officers
9 in the Ministry who are assigned to the various
10 programs: Fish, wildlife, forest resources and, of
11 course, there are policy officers in Corporate Policy
12 Branch of the Ministry.

13 But in the context of northern Ontario
14 and in the context of someone being actually situated
15 in northern Ontario and representing the field
16 interest, I am that person.

17 Q. Until you were appointed the policy
18 officer for Ontario, it is my understanding from your
19 CV that for two years you were the Wawa District
20 manager?

21 A. That's correct, about two and a half.

22 Q. Why, in your view --

23 THE CHAIRMAN: Mr. Williams, I do not
24 want to interrupt you, but are you taking issue--

25 MR. WILLIAMS: No, no, I'm not.

1 THE CHAIRMAN: --with Mr. Clark's
2 qualifications?

3 MR. WILLIAMS: No, I am not, Mr. Chairman.

4 THE CHAIRMAN: Then what exactly is the
5 relevancy of all of this to the evidence given by the
6 witness?

7 MR. WILLIAMS: Well, coming I think, Mr.
8 Chairman, to the fact that he was qualified because of
9 his IRM orientation to speak as a professional in that
10 area and that's where my line of questioning is going
11 to.

12 THE CHAIRMAN: But doesn't that go to
13 qualification? I mean, he presented his curriculum
14 vitae at the outset.

15 MR. WILLIAMS: Yes.

16 THE CHAIRMAN: And counsel were given an
17 opportunity to question anything in that CV in terms of
18 qualifications. Isn't this line of questioning along
19 those lines?

20 MR. WILLIAMS: I think, Mr. Chairman, we
21 are just simply trying to determine what extra special
22 skills he has over and above what any other former
23 district manager -- or district manager may have had,
24 and I think we're just trying to get a full
25 appreciation of the talent that we have here. We are

1 not challenging his...

2 THE CHAIRMAN: Well, you know, with
3 respect, I do not think the Board wants to rehash what
4 is contained in the curriculum vitae. The Board has
5 read it and we are aware of what experience he has in
6 terms of what is set out in there.

7 MR. WILLIAMS: I wasn't going into his CV
8 other than those two leading questions, Mr. Chairman.

9 THE CHAIRMAN: Okay.

10 MR. WILLIAMS: Q. Mr. Clark, as the
11 overall co-ordinator, if you will, as a policy officer
12 for northern Ontario and dealing with the IRM process,
13 in particular the data collection process, can you
14 advise if all of the material that is used and will be
15 used, will be explained I presume further in Panel 8,
16 all of the resource material that has been talked about
17 over the course of the evidence submitted in this
18 panel, can you advise if that material is all used by a
19 unit forester in analysing the impact of forest
20 management plans?

21 MR. CLARK: A. Well, I think I would go
22 back to the evidence that I presented, the quantity,
23 quality and specificity of information that's used is
24 dependent on the particular problem being dealt with or
25 the potential effect.

1 The point that I made early on in my
2 evidence, particularly with reference to, I think Table
3 5A or 5 I think it was, in my evidence, was that this
4 was a table that indicated the information that was
5 generally available at the management unit level.

6 To the extent that that information is
7 available and it is germane to the particular issue
8 that the unit forester is dealing with, he would use
9 it, he or she.

10 MR. WILLIAMS: Now, Mr. Chairman, I can
11 assure you I am not going to go into how the integrated
12 resource management process is undertaken, but I wanted
13 to get his professional opinion with regard to the
14 approach that would be taken in dealing with IRM.

15 THE CHAIRMAN: Okay. As long as we are
16 are not going to rehash the evidence given in the
17 earlier panels, because they did spend some time on
18 IRM. We will allow a few questions along those lines.

19 MR. WILLIAMS: Q. In your opening
20 paragraph you stated that:

21 "In order to make resource management
22 decisions which are to apply to a
23 specific geographical location, it is
24 necessary to collect information and
25 describe the environment that will be

1 affected or that might reasonably be
2 expected to be affected at that
3 location."

4 Then you state:

5 "This allows decision-makers to make
6 informed reasonable resource management
7 decisions."

8 Now, Mr. Clark, are you telling us that
9 simply by describing the environment you can make
10 informed reasonable resource management decisions?

11 MR. CLARK: A. Certainly not. I
12 think -- without going into a lot of detail, I think
13 that's certainly the first step in the process and
14 that's certainly been the emphasis in this panel.

15 What we have tried to demonstrate is the
16 kind and amount of information that's generally
17 available. We have tried to establish the basic
18 principle that the amount and kind and specificity of
19 information we collect is dependent on the problem
20 being dealt with. So that, in effect, is the first
21 step in arriving at a reasonable decision.

22 The next step, of course, is what you
23 actually do with the data. And I think, as Mr. Douglas
24 pointed out in Panel 1, we have a resource management
25 planning process that's relatively standard for a

1 variety of planning exercises including fisheries
2 management plans, for example, and timber management
3 plans and we provide fairly detailed direction by way
4 of manuals on how that process should work, and the
5 future evidence that we will be presenting will detail
6 specifically how we use information in making either
7 recommendations or decisions relative to, for example,
8 in this case, timber management.

9 Q. Will that involve impact prediction?

10 A. Yes. As I think I pointed out --
11 well, I am not sure just precisely what you mean by
12 impact prediction. But if you mean assessing potential
13 effects and recommending means of either preventing,
14 mitigating or remedying them, yes, that is part of the
15 process that will be dealt with in that evidence.

16 I should point out it will be dealt with
17 in evidence throughout the whole range of panels, from
18 10 through to the end of 13 anyway, and more
19 particularly, of course, when we deal with the planning
20 process in Panel 15.

21 Q. In applying impact prediction and
22 impact analysis, does this also bring into play
23 cause/effect considerations?

24 A. I am wondering if you could give me
25 an example of what you are meaning here.

1 Q. Well, surely where you are dealing
2 with impact in trying to predict and analyse impact you
3 can't effectively do that without seeing how a given
4 cause is creating an effect; can you?

5 A. Well, yes, and I would certainly -- I
6 am hesitant to start talking specifically about cause
7 and effect. We all want to be able to establish cause
8 and effect.

9 I would I think want to talk in terms of
10 the risk of harm being done and I would want to talk
11 about potential effects because, in many instances,
12 these things - and I can assure you from my
13 experience - are not as clear cut as we would like them
14 to be. And I think in all our evidence this is one of
15 the points that we make quite strongly. We regularly
16 talk about the risk of harm being done and potential
17 effects.

18 But to the extent that we can identify
19 potential effects or the risk of harm being done, as I
20 think I pointed out in my earlier evidence, we
21 certainly do so because it is really essential to,
22 first of all, in the first step evaluating the adequacy
23 of the data that we have and whether we need more and;
24 secondly, as I pointed out earlier, dealing with our
25 comfort level in terms of knowing that we have made an

1 appropriate recommendation or decision and dealing with
2 the various stakeholders who we normally are working
3 with.

4 Q. So then, in your professional
5 judgment, that whole consideration of cause and effect
6 will be a very integral part of the integrated resource
7 management process that we will be talking about in the
8 next panel; is that --

9 A. Well, as I say, I like the words risk
10 of harm being done and potential effects where we can
11 identify a nice tidy causal relationship between one
12 activity and another. That's certainly very desirable.

13 Q. Mr. Clark, throughout the hearings to
14 date we have been using, as an example in talking about
15 district land use planning, the Wawa District Plan, and
16 your having been the district manager for that
17 particular district for two and a half years.

18 I think that you would be an extremely
19 valuable witness to discuss that plan if it were to be
20 the sample that is going to be used, I believe on Panel
21 10, at least there is an indication that -- I am sorry,
22 Panel 15, there is an indication that has been given
23 from the agenda that, in that panel, they will be using
24 a draft timber management plan.

25 Do you know if a timber management plan

1 will be used from the Wawa District for that purpose
2 and, if so, whether you will be the witness called to
3 testify with regard to that process?

4 A. Yes. I am not sure whether I am
5 confused or you are. The Wawa DLUG, the District Land
6 Use Guidelines, I don't believe will be discussed in
7 the context of Panel 15 which will be specifically
8 addressing timber management planning and will use a
9 variety of -- or will take examples from timber
10 management plans as distinct from the District Land Use
11 Guidelines.

12 I don't believe at this point in time
13 that it is our intention to use any of the timber
14 management plans from Wawa District.

15 Q. Simply in the context in which it can
16 relate to timber management planning, you have been
17 involved, have you not, in timber management planning
18 in the Wawa District when you were a district manager?

19 A. Yes.

20 Q. How many district plans -- timber
21 management plans were you involved in, for instance?

22 A. I should caution you, I was involved
23 under the "old system", not the system that we are
24 currently using, but I was involved in the development
25 of four plans at that time.

1 Q. Then perhaps when I said that it
2 would appear that you would serve as a useful witness,
3 I presumed you had been involved in the new process, so
4 to speak, of timber management planning. You say now
5 that you are not or have not?

6 A. No, I can't claim to have been. I
7 think they are doing plans in Wawa District now that
8 utilize the new system.

9 When I was there, the new system was
10 coming into place and we adopted many of the changes in
11 that process, for example, public consultation, we
12 followed basically the same procedure that we do now.
13 But the difference was that it wasn't -- we weren't
14 obligated, it wasn't mandatory to do so.

15 Q. As a district manager, we were
16 talking a few moments ago about some of the factors
17 that might be involved and used in doing the integrated
18 resource management process.

19 But can you tell me, having been a
20 district manager, if any formal staff training is
21 provided to your people at the staff -- at the district
22 level in these following key areas: environmental
23 impact prediction?

24 A. Stated specifically the way you have
25 used the term environmental impact prediction, I would

1 say no. But I would like to condition that by saying
2 that if by that you mean training staff so that there
3 were potential effects, particularly for example as it
4 relates to timber management on resources that are of
5 interest to them, for example fisheries resources,
6 wildlife resources, tourism resources, I would say yes.

7 I think it has been pointed out, we are
8 involved in taking the planning teams that are involved
9 in the development of timber management plans and we do
10 provide them with a very intensive training program and
11 part of that program, for example, involves the use or
12 the application of tools such as the Tourism
13 Guidelines, the Timber Management Guidelines for the
14 Protection of Fish Habitat, Tourism Guidelines for the
15 Protection of Moose -- Provision of Moose Habitat.

16 And, in doing so, an essential theme
17 that's been addressed there is what the potential
18 impacts are and how we can either enhance positive
19 impacts or effects, I should say, or mitigate, prevent
20 or remedy negative effects.

21 So in that context, I would say our staff
22 do receive that training.

23 Q. I mentioned one of what I have
24 identified or categorized as the key areas in formal
25 training for the local staff, I mentioned environmental

1 impact prediction.

2 Let me just list the other four so that
3 you can see if you can group it all in your answer:

4 Environmental impact evaluation;
5 collection and integration of impact evaluation;
6 collection and integration of public preferences in
7 environmental assessment; and, fifthly, trade-off
8 decision-making.

9 Are all those areas the subject matter of
10 formal staff training to acquaint staff with and
11 educate them in how to deal with those key elements in
12 the process?

13 A. I think that -- if I have a problem
14 here it is that your words are slightly different than
15 mine. I think though that the course in particular
16 that I was talking about, the course that we currently
17 provide for the IRM teams that are developing timber
18 management plans, essentially addresses those issues.

19 It does talk about data collection, it
20 does talk about the identification and mitigation of
21 potential effects, it does talk about the whole
22 business of identifying values and the whole area of
23 the concern process which we will be elaborating on which,
24 in effect, is a process that's aimed at making
25 decisions about potential effects and how we mitigate

1 them.

2 And I believe that by and large the
3 content of that course satisfies the requirements that
4 you have identified there.

5 I might add that, in addition to that, we
6 have an ongoing training program both internally and
7 externally. Internally -- by internally I mean courses
8 that we would run ourselves, either special courses
9 that are set up for a particular purpose or those that
10 are provided by agencies outside of government that
11 provide many opportunities for training related to the
12 kinds of issues that you are identified with.

13 I am hesitant to detail them here, for
14 one, I don't think I could. I should point out that in
15 Panel 8 we have listed many of those courses and, in
16 presenting evidence in that section, we will be
17 speaking to the training requirements and the training
18 programs that we have established for our staff.

19 Q. Well, my next question was, Mr.
20 Clark, if you could in fact be specific about the
21 courses that you say are provided to staff as to how
22 intensive or how extensive or how frequently they are
23 provided.

24 You have said in general terms that they
25 are ongoing training courses, but I am still not

1 satisfied with regard to the specific training courses
2 as to their --

3 THE CHAIRMAN: Mr. Freidin?

4 MR. FREIDIN: I think the witness has
5 already answered the question. He has indicated that
6 he doesn't believe that he can give that specificity
7 and, in fact, that more specific information will be
8 one of the very subject matters of Panel No. 8. I
9 think that's the answer.

10 THE CHAIRMAN: If we are going to deal I
11 think with the training aspects of Ministry personnel,
12 Mr. Williams, in a separate panel in more detail, then
13 perhaps that would be the appropriate place to deal
14 with it.

15 MR. PYZER: Mr. Chairman, if I could just
16 help out a little bit.

17 One thing that Mr. Clark may not have
18 mentioned is the fact that each supervisor performs a
19 performance appraisal on his staff each year. So in
20 terms of fish and wildlife, as an example, all of the
21 people under that fish and wildlife supervisor would be
22 subject to a performance appraisal. The same with the
23 forest program, operations, land, parks et cetera.

24 Any of those people that would be sitting
25 on a timber management planning team, that is the point

1 in time where in fact you would go through and identify
2 if in fact you are going to be on a timber management
3 planning team, what training requirement or needs both
4 the supervisor and staff person feel are required.

5 Just as a couple of examples. Most of
6 the people responsible for IRM, the planner, if you
7 will, at the district level have taken courses -
8 because I have been involved in this myself in terms of
9 performance appraisal - they have gone on negotiating
10 skills workshops. I could tell you that staff have
11 gone out to the Banff Centre for Resource Development
12 in Alberta and taken specific courses on environmental
13 impact planning and environmental impact assessment.

14 So I just wouldn't want to downplay the
15 fact that every staff member receives a performance
16 appraisal every year, and the key of that is the
17 identification of weaknesses for training and
18 development. And, in fact, in every district a
19 training and development plan is put together for all
20 staff each year.

21 MR. CLARK: Mr. Williams, if I may, too.
22 I want to stress that I am certainly not trying to
23 avoid the issue, but I think if you want to talk about
24 the individual training programs you have got to see
25 them, and where you are going to see them is in Panel 8

1 where we have included summaries of the course content
2 and a fairly detailed explanation of the process that
3 Mr. Pyzer is talking about.

4 MR. WILLIAMS: All right. We will look
5 forward to learning more about them in Panel 8.

6 Q. But just my concluding question on
7 that then. To be quite clear in my mind, is that the
8 type of courses then that Mr. Pyzer and you are talking
9 about, are really very formal professional type of
10 courses?

11 MR. CLARK: A. Absolutely, yes.

12 MR. WARD: A. I would also like to add
13 that there is an informal process as well. As a
14 regional specialist, I am worried about the fisheries
15 program being delivered in six districts in the
16 northwest region. When I come across articles of
17 interest regarding the effects of logging on the
18 aquatic environment, it is not unusual for me to make
19 copies of those and send them to the district fisheries
20 biologist.

21 For example, I have just sent a book by
22 Brown on water quality and the logging effects on water
23 quality and that kind of thing goes on informally. It
24 probably wouldn't be listed or mentioned in Panel 8,
25 but that's the kind of thing we do as well in terms of

1 looking at the literature, the scientific literature
2 and making sure that that information gets to our field
3 people.

4 Q. So this is the other dimension of
5 training that Mr. Clark was talking about on the
6 informal level--

7 A. Right.

8 Q. --that is ongoing?

9 A. Right.

10 Q. Thank you.

11 MR. McNICOL: A. Mr. Williams, also to
12 help you with your question, I personally have been
13 involved for the last five years in the presentation of
14 a course entitled Moose Habitat and Forest Management
15 Planning.

16 It is a course that deals with the
17 potential impacts of forest management practices on
18 moose and the means by which we should be applying the
19 Moose Habitat Management Guidelines. This course is
20 available to any and all individuals that wish to take
21 it. Over the years we have had forest technicians,
22 foresters, biologists and company personnel take this
23 course.

24 It has been offered in all three of the
25 northern -- all three of the northern regions with the

1 exception of the northeast. We have had individuals
2 attending from the northeast region, but over the years
3 we have given the course I believe to about 200 people
4 and this was given -- I have been involved, Mr. Peter
5 Kroskrie also has been involved in the presentation of
6 this course.

7 Q. This course, Mr. McNicol, this isn't
8 provided on a mandatory basis, it is...

9 A. No, it is not. It was offered
10 originally in what we call the Wildlife Short Course
11 Program. These were a number of short courses that
12 were detailed in a catalogue which was sent out to all
13 districts and all regions. Anyone that wished to take
14 that particular course would indicate that intention
15 through the filling out of an application form.

16 This was coordinated through Toronto, and
17 at a point in time the individual responsible for
18 giving that course would be informed by Toronto of the
19 number of individuals that were attending and from what
20 regions and districts and at that time the place and
21 time for the course was set.

22 Q. This was a course that was initiated
23 by yourself and put together by yourself; was it?

24 A. By myself and Mr. Kroskrie.

25 Q. And was this offered across the whole

1 of the province on a global basis, so to speak, that
2 any staff from any of the districts could attend, or
3 was it just in the region?

4 A. No, this is across basically the
5 north because it had to do with moose habitat and
6 forest management. So it was most relevant to those
7 individuals that had those activities and that species
8 in the district.

9 Q. Thank you. Mr. Clark, while each one
10 of the 34 districts within the area of the undertaking
11 is responsible for the timber management plans in its
12 district, are not all of the districts collectively
13 responsible for all the timber management plans within
14 the area of the undertaking?

15 MR. CLARK: A. I am not sure what your
16 point is here, just what you are saying.

17 Q. Given that -- well, let me add this:
18 In that situation, does that not present the
19 possibility of considerable and potentially unfair
20 variation amongst districts in terms of what is
21 adequate and what weights will be given to various
22 resource values in doing timber management planning, if
23 they are dealt without a uniform set of standards or
24 guidelines to assist them in development of that
25 planning process, the application of it?

1 A. Certainly in the absence of adequate
2 direction, the potential for having a variety of
3 different responses and different locations is quite
4 real.

5 I think in my evidence I talked about
6 achieving a balance between professional judgment on
7 the one hand and encouraging that sort of thing; that
8 is, encouraging professional judgment from people who
9 have training, who have local knowledge and experience
10 and, on the other hand, achieving Ministry direction.
11 And I think that this is a balance that we work very,
12 very hard to achieve.

13 And I think that the way we attempt to
14 deal with this is, first of all, on the professional
15 judgment end of things we make sure that our staff are
16 adequately trained, have a reasonable amount of
17 experience and are familiar with local conditions.

18 On the other side of the equation, where
19 we make want to make sure we have adequate direction:
20 We provide them with policies, procedures, guidelines,
21 implementation manuals and a variety of other tools,
22 the use of some of which are mandatory which provide
23 the kind of corporate direction that we think is
24 essential to get a product that is relatively
25 consistent throughout the area of the undertaking.

1 And I can't stress from our point of view
2 how important this is. So that we have a standardized
3 timber management planning process.

4 We have fairly, what I would characterize
5 as standardized data collection, cataloguing and
6 storage approaches. We have guidelines. For example,
7 the Timber Management Guidelines for the Provision of
8 Moose Habitat, what we commonly refer to as the Fish
9 Guidelines and the Tourism Guidelines which are
10 standardized and which provide a range of -- or
11 potential responses that is fairly limited, and the use
12 of these guidelines are mandatory and we provide a
13 number of other implementation manuals that provide
14 pretty explicit direction to field staff.

15 In addition to that, we have an audit and
16 review system in place. Plans are done at the district
17 level but they receive technical direction to some
18 extent from the region and main office. They can
19 make -- and those plans are reviewed first and approved
20 by the district manager, they are reviewed in detail at
21 the regional level, there is a regional review process.

22 So I guess the point I am making here, as
23 I pointed out earlier and I stressed at great length in
24 my evidence, that we want to encourage professionals to
25 exercise professional judgment, but we want them to do

1 that in the context of some fairly significant overall
2 Ministry directions, some of which I have talked about
3 now.

4 Q. It is my understanding in the
5 Ministry of Agriculture and Food they have centralized
6 the environmental assessment process by having two or
7 three people in the whole of the Ministry dealing with
8 those issues so as to centralize and provide uniformity
9 in the process. That's impractical here, of course,
10 given the characteristics of this Ministry and its
11 operation and the way that you have explained it.

12 Are you saying then from what you have
13 told me, notwithstanding that they can do it in an
14 entirely different way, you have to have many
15 participants involved through the -- using the 34
16 districts as the key and still maintain that
17 standardization and level of delivery of consistency in
18 the Class EA process?

19 A. A co-ordinated, decentralized
20 organization is the way we characterize ourselves and
21 we think our strength lies in the fact - and I don't
22 think I need to revisit all this - that we have people
23 in the field who have experience, training and a
24 knowledge of local situations and, therefore, can be
25 responsive to them.

1 And I think the term that's been used on
2 a number of occasions is we don't take an approach that
3 involves parachuting in people to make sort of one off
4 decisions. We have, I think, a fair degree of
5 continuity.

6 Just with reference to centralization.
7 We do have a Planning and Environmental Assessment
8 Branch that does provide overall direction in policy
9 matters, but in terms of, if you want program delivery,
10 in responding in the field, we do so at the local
11 level.

12 Q. Are you familiar with the rule of
13 traceability and accountability?

14 A. I may be, but you might want to tell
15 it to me.

16 Q. You tell it to me, you are the
17 witness.

18 A. Well, I am not sure what you are
19 asking me.

20 Q. How is the rule applied in integrated
21 resource management process?

22 A. Well, I guess what you are really
23 saying is, we have to be responsible for the decisions
24 that we make and we have to be accountable in the sense
25 that we have documented the basis on which we made our

1 decisions.

2 In a general way, I would say that that's
3 an integral part of the resource management planning
4 process that we have in the Ministry and certainly in
5 terms of timber management planning, very early on in
6 the process, as I know you are aware, we get involved
7 in data collection in the development of a values map
8 and that's really the first step in identifying areas
9 of concern.

10 And there is a very detailed
11 documentation process which we will be elaborating on
12 that, in effect, explains the means by which we
13 identify values, identify potential impacts, identify
14 mitigative measures and how we document that in a
15 timber management plan.

16 So, yes, if my interpretation is correct,
17 that's a central part of the way we do timber
18 management planning.

19 Q. And I presume, again, that in order
20 to deal with -- to see how that rule is applied in a
21 very specific way and with explicit examples we are
22 going to have to wait until Panel 8; are we?

23 A. Well, no, I think Panel 15 in this
24 particular case.

25 Q. 15.

1 A. I think -- you know, I don't want to
2 keep shying away from this. We are going to be dealing
3 with it in pretty well every panel.

4 Q. I understand it is difficult, but I
5 am just -- and I don't want to go over the line either,
6 but I think it is important to get some of these basic
7 considerations up front because, after all, you are a
8 professional witness who is involved in the process and
9 I am looking for your professional assessment of where
10 these things are going to play a role in the IRM
11 process without getting into the details of the hows
12 and the whys and the people involved.

13 At page 68 -- I am sorry, 65, paragraph
14 8, it is stated that:

15 "The staff at the district level
16 involved in timber planning and
17 management have access to data
18 collected over a considerable period of
19 time at district and provincial levels."

20 THE CHAIRMAN: What page are you at?

21 MR. WILLIAMS: Page 65.

22 THE CHAIRMAN: Thank you.

23 MR. WILLIAMS: Paragraph 8, which the
24 evidence given by Mr. Clark is:

25 "The staff at the district involved in

1 timber planning and management have
2 access to data collected over a
3 considerable period of time at the
4 district and provincial levels,
5 from their own expertise, from the
6 expertise and experience of other
7 district staff and from regular ongoing
8 contact with government ministries,
9 agencies or their stakeholders."

10 Now, from your own area of expertise,
11 what are we talking about there?

12 MR. CLARK: A. Well, I think what we
13 have been talking about is what we have been talking
14 about in all the evidence that we have presented to
15 date.

16 I think that what you have essentially
17 heard from today or over the last week is what I would
18 characterize as an IRM team, you have the forester --
19 it is a little bit limited, but you have got a
20 forester, a fisheries biologist, a wildlife biologist
21 and a district manager. And in each -- and a parks
22 person, my apologies.

23 What we have really talked about is the
24 kind of data that we regularly collect, the kind of
25 data that we sometimes specially collect as a result of

1 problems, and the kind of data that we glean from other
2 sources. And we have elaborated on how we do that in
3 a formal way and how we have done that in an informal
4 way, and I believe that's what the evidence has been
5 about.

6 Q. During the examination-in-chief on
7 this point, yes, you gave a great deal of evidence on
8 how there is what you call a balancing act
9 consideration.

10 And the transcripts of evidence at page
11 8796 there is talk about creation of a cookbook and you
12 were giving assurances that you didn't have a cookbook
13 mentality at the district level; is that not correct?

14 A. That's correct.

15 Q. And could you just again explain how
16 you avoided that cookbook approach which some people
17 characterize you as applying at the district delivery
18 level?

19 A. Well, first of all, I am going to
20 sound like a record replaying itself.

21 Q. I don't want you to repeat a lot of
22 evidence, just where is the balancing that comes in
23 again just to very quickly -- I just want to get what
24 you say avoids that cookbook approach?

25 A. Professional staff with training and

1 local knowledge who work with a variety of pre-existing
2 obligations, manuals, guidelines that provide general
3 direction, in some cases quite specific, but provide
4 the opportunity for these people to exercise
5 professional judgment and take into account the local
6 nuance, if you want.

7 And I couldn't help but think in terms of
8 a lot of the evidence we heard yesterday -- over the
9 last day or so from Mr. McNicol that that kind of
10 situation would have been quite clear where every
11 situation is somewhat different and if you don't know
12 the details of that situation you are not able to
13 respond in a particularly meaningful way.

14 And I was thinking of it particularly in
15 the context of, for example, the discussion concerning
16 caribou in the Nipigon area versus caribou in the
17 Dryden area where the history was important, knowledge
18 of local conditions was important, and knowledge of,
19 well, those two points in particular I think
20 demonstrated the obvious need for having an approach
21 that, on the one hand is consistent with overall
22 Ministry direction, but on the other hand is cognizant
23 of local conditions.

24 Q. In the transcript of evidence, page
25 8796, you said -- and I guess it is a reiteration of

1 what you just said:

2 "The cookbook approach is one where the
3 organization provides a great deal of
4 detailed direction, so much so that the
5 staff at the field level -- well, let's
6 say that their ability to make
7 professional judgments is compromised by
8 an unwieldy amount of direction and I
9 think most people are familiar with this
10 kind of a thing."

11 And then you said: the point that I
12 would make is that there has to be a balance between
13 that and people in the field exercising professional
14 judgment. You want to hire people that are well
15 trained, intelligent, have knowledge of local
16 situations and could exercise good judgment.

17 That's the informal aspects of it; right?

18 A. Yes.

19 Q. And Mr. Pyzer I think spent some
20 considerable time explaining to us how in a very
21 personal way on the strength of this informal
22 grassroots approach pays dividends and, if I might, Mr.
23 Pyzer had expressed that there were many situations
24 where the informality was such that there was not
25 even a recording of any of the things that they

1 experienced on a day-to-day basis in the field.

2 In that regard, Mr. Pyzer gave an example
3 and in fact I would redirect this question to Mr.
4 Pyzer.

5 Mr. Pyzer, you had stated on page 8832 or
6 gave an example of a situation where an issue may arise
7 or be brought forward early in a timber management
8 planning process and the question of whether the
9 documentation would always make it apparent exactly how
10 an issue got resolved.

11 And you, Mr. Pyzer, gave an example about
12 a tourist operator or a remote tourist operator, a
13 fly-in tourist operator. And you said in that example:

14 "...there are areas -- in fact we just
15 flew up with a commercial fisherman a
16 week or two ago. Commercial fisherman in
17 our district, he flies, I don't know,
18 80 or 90 miles to the north, tremendous
19 expense, he has got to fly in every day
20 to check his nets...He in fact would like
21 to see road access into the lake."

22 And then further down the page, 8823 you
23 say:

24 "Now, we haven't recorded that probably
25 anywhere but the fish and wildlife

1 supervisor was in the aircraft with him.
2 He was in the boats lifting the nets with
3 him, they they were talking about that
4 issue and I know about it because
5 that's...the way we do business in the
6 district."
7 Then you went on on the next page to say:
8 "...I would hazard to guess that without
9 any piece of correspondence all of the
10 fish and wildlife ppeople that are
11 involved in that activity know that for
12 that particular individual's licence, if
13 and when the opportunity comes to put a
14 road in there, prior to any value maps
15 being established or anything else, if
16 that road could go by there without
17 causing an impact to anyone else, there
18 is a tremendous benefit to that
19 individual and we do that constantly all
20 the time."

21 Now, that's the other extreme, isn't it,
22 Mr. Pyzer, of going from the formal to the informal
23 where there may be circumstances or occasions where you
24 feel you are there, you know it, you are doing it in
25 the field, you have made a mental note of it and your

1 staff may be familiar with it, but is this wise to be
2 that informal in the process?

3 MR. PYZER: A. Actually I am not sure I
4 would agree it is the other extreme, in fact, I think
5 it maybe points out an additional beneficial point.

6 Because in that were we are preparing a
7 timber management plan in that area, the area of
8 concern and the map would identify that in fact we have
9 a commercial fishing licence. All the sorts of things
10 that Mr. Clark talked about in terms of formal
11 documentation and formal records would all be there.

12 All of the social and economic
13 information that I put forward in my evidence would in
14 fact be formalized and would be on that map. Before we
15 even started that timber management planning process we
16 would know on that remote lake there was a commercial
17 fisherman; we would know who he was, we would know what
18 his addresses were if he were seasonal or where he were
19 located, we would know the extent of the number of nets
20 he had, whether he flew in or drove in.

21 All of that that relates to commercial
22 fishermen and commercial fishing as -- commercial
23 fishermen as stakeholders, the formal documentation, if
24 you will, is in the package that I presented.

25 The informal side of it would be that we

1 knew in advance that the likelihood existed that were
2 we to put a road past that particular lake that there
3 would probably be advantages to that commercial
4 fisherman from a drive-in perspective as opposed to
5 flying in.

6 And I think we have had enough of those
7 discussions that were we ever to come across a
8 commercial fishing lake that was being flown into
9 without even talking to the commercial fisherman, we
10 would suspect that the possibility exists that there
11 are significant benefits to him if, in fact, that lake
12 could be road accessed as a possibility, something to
13 talk about.

14 And I would suspect that were that to
15 happen, we would talk to that commercial fisherman and
16 get his views, whether we had flown in the week before
17 or the month before or two years before.

18 THE CHAIRMAN: Mr. Williams --

19 MR. PYZER: I am sorry,

20 THE CHAIRMAN: Are you finished?

21 MR. PYZER: Yes.

22 THE CHAIRMAN: Mr. Williams, are you
23 suggesting that there is something wrong with once
24 having had a formal process of documentation and a
25 formal look at -- or a look at the formal documentation

1 that exists, that there is somehow something wrong with
2 an informal approach added to that?

3 MR. WILLIAMS: No. I think in the case
4 that Mr. Pyzer gave he talked about the recording of
5 data about the individual that he used as an example;
6 who he did, what he did, his commercial undertakings,
7 whether his operation is doing well or losing money.

8 But as to a suggestion in his example
9 that this would bring about a road access being
10 provided to the lake without it being indicated how the
11 request came about or under what circumstances was what
12 prompted both yourself - and I would suggest Mr.
13 Martel - to take a differing points of view on that and
14 I was using that example simply because, Mr. Chairman,
15 the question is: Isn't this really one of the central
16 concerns about the provision of information, not just
17 for in-house use, so that the comfort level that Mr.
18 Clark talked about is there with the public so that
19 they understand how these things do come about.

20 And I was going to...

21 THE CHAIRMAN: But how practically are
22 you going to get into a situation where every time,
23 particularly with a Ministry that appears to have a lot
24 of personal contact with the clients, if I can use that
25 term, that it serves, how are you going to get around

1 the fact that every time anything is said it does not
2 necessarily find its way into a document, or a report
3 or some kind of reporting mechanism?

4 I mean, there is lots of examples in
5 government regulatory agencies where there is not much
6 formal contact, somebody applies to an office for a
7 licence and they show up and that is the extent of the
8 contact.

9 Obviously with this Ministry there
10 appears to be a lot of contact on sort of an ongoing
11 basis with the clientele out there. And are you
12 suggesting that when there is this contact, every time
13 there is contact, it should automatically somehow be
14 reported formally?

15 MR. WILLIAMS: Not at all, Mr. Chairman.
16 Again, the contact in itself is not the issue, it is
17 what resulted from that and the fact that that contact
18 may have precipitated that road going into what was
19 prior thereto an inaccessible remote lodge facility.

20 And if there wasn't some indication that
21 it had, in fact, been initiated in an ever so informal
22 way in the field, if that was questioned or challenged
23 at some time in the future, how would the public know
24 the basis on which that activity or that facility was
25 provided.

1 And I understand the problem it presents,
2 Mr. Chairman, because you yourself had said: Isn't
3 there a danger of becoming a slave to the process if
4 you are going to spend all your time recording things.

5 MR. PYZER: Mr. Williams, sorry. If I
6 confused you, I apologize for that. If I have led you
7 to believe that on the basis of that conversation we
8 would ever make a decision to road access that lake,
9 certainly that's not the point and absolutely, no, we
10 would never make a decision of that kind of major
11 consequence on the basis of two people flying into a
12 lake.

13 And if I have confused you on that, I
14 apologize. We are talking about something here between
15 two timber management planning periods.

16 So, no decision -- absolutely no decision
17 would ever have been made on that.

18 MR. WILLIAMS: Q. All right. I
19 understand that, Mr. Pyzer, there is no confusion
20 there.

21 But sometimes in a very informal way
22 through in-field activity these things can be initiated
23 and come to pass until it reaches a point where many
24 more people become involved, and there is a public
25 input and then the questions start to come as to how

1 did this come to pass and under what circumstances, why
2 are you contemplating putting a road in here using that
3 example.

4 THE CHAIRMAN: But are you not
5 forgetting, Mr. Williams, the draft plan stage. I
6 mean, as I understand it, before a plan is solidified,
7 there is a draft plan that is put out through a whole
8 process of public consultation. And certainly if the
9 draft plan showed a road going in somewhere and people
10 objected or raised it, wouldn't the explanation be
11 provided to the public at that time as to why the road
12 was going in or contemplated going in and wouldn't
13 the - and I do not mean to put words in the Ministry's
14 mouth - but wouldn't the Ministry be explaining that
15 the reason the road is going is because a particular
16 tourist operator felt that it would be beneficial to
17 him and we don't see that there is any negative
18 negative impacts and, therefore, we are willing to
19 accommodate it or some explanation along those lines?

20 I mean, what is the purpose of the draft
21 plan stage if it isn't to solicit public input on
22 decisions that might be contemplated.

23 MR. CLARK: I may be able to help here a
24 little bit. We may have led you a little astray here.

25 We take great pride in our ability to

1 deal with the public in the district in an informal way
2 and gain, as I call it, knowledge of the qualitative
3 dimensions of problems. The other point I want to
4 stress, however, is that it is very rare for us to make
5 a decision or to make an ad hoc decision. We plan and
6 we plan and we plan, regardless of whether it is for
7 timber management, fisheries management, park
8 management, the development of any resource involves
9 obligations that really create a situation where before
10 we make any decision we consult with the public.

11 Now, I think that the point that I would
12 really want to make here is that the timber management
13 planning process, as defined now, really tries to take
14 advantage of the informal contact and the information
15 that we derive from that. And the way it tries to take
16 advantage of that is through, first of all, the data
17 collection phase that results in the development of a
18 values map and the values map is our best indication as
19 to what we think we know about the area that is to be
20 planned and the particular values that are there. And,
21 in effect, it reflects the collective knowledge of
22 staff in various programs in the district.

23 Now, once that map is established, it is
24 then available to the public and it is at that point
25 they have an opportunity to look at the

1 material and the assumptions that we have made and
2 verify it or supplement it.

3 So that, yes, there is all kinds of
4 informal contact, but that finds formal expression
5 through the timber management planning process. And
6 the point I would make is, it is a formal process and
7 we are not normally in the business of making ad hoc
8 decisions that involve the situations, for example,
9 like Mr. Pyzer referred to. That would simply be
10 information that would be inputted to the process.

11 MR. WILLIAMS: Q. I understand that,
12 that it goes into the development of those plans, but
13 what the catalyst was or what initiated the whole
14 matter may be something, as Mr. Martel said in
15 expressing his concern about this, that you have
16 material - and I am referring to page 8833 of the
17 evidence.

18 I think Mr. Martel expressed the concern
19 very well. He said this:

20 "That if you have the material that you
21 carry around in your head as an
22 individual, you don't record it anywhere,
23 can that not create problems for you that
24 you, a forester moves out and let's say a
25 biologist, they take with them the

1 information and the problem comes to the
2 floor again and somebody says: Well,
3 look, I brought that to your attention
4 two years ago. It wasn't the database,
5 it is the information you have that's
6 available to you. Would it not make
7 sense to record that so in fact you have
8 it down the road."

9 And that's I think the other dimension of
10 the problem and the concern.

11 I understand that the planning process
12 starts and that particular district Ministry may start
13 to lay plans for a road into the area in all of the
14 preliminary planning process, but maybe the very
15 preliminary ingredients that led to that may not be
16 part of the consideration.

17 MR. PYZER: A. I guess I would say a
18 couple of things and one of them would be, I am not
19 certain that that in fact wasn't recorded and quite
20 regularly when people are out meeting with people there
21 are definitely memos to file. That information does go
22 on file.

23 So, first of all, I would like to say
24 that I am not certain that it has not been reported, it
25 could very well have.

1 But the other point is that to some
2 extent, even if it was recorded, because this is not
3 part of the timber management process, it is a good
4 piece of information that we have and we would identify
5 during the next timber management planning exercise
6 that a commercial fisherman is on that lake - and I
7 should hasten to mention that there is a tourist
8 operation on that lake as well - we haven't as yet
9 consulted with him and certainly the group that you
10 represent, I know most of the people in Kenora well
11 enough to know that they have an interest in this
12 particular lake and they would probably like to see a
13 road in there.

14 On the basis of having flown in with one
15 commercial fisherman and got his feeling is just one
16 piece of information that's interesting now and we have
17 that sense, but when we got into timber management
18 planning, we would not use that as the sole piece of
19 information or make any kinds of decision relative to
20 it. We now know that someone has expressed a comment
21 about it and, to that extent, it's a good piece of
22 information.

23 It is not a decision that we had made by
24 any stretch of the imagination. And, again, I am not
25 certain whether in fact that hasn't -- there isn't a

1 memo to file on that conversation and on that trip.
2 And there are great numbers of memos to file and often
3 when a memo goes to file - in this case fish and
4 wildlife - it would get circulated, there would be a
5 memo to file with a cc - a carbon copy - to the forest
6 supervisor, possibly to the operations IRM supervisor,
7 land supervisor, et cetera.

8 MR. CLARK: A. Think Mr. Kennedy may be
9 able to help here, Mr. Williams.

10 Q. All right.

11 MR. KENNEDY: A. We are talking a
12 subject of documenting information and particularly
13 roads information. In the timber management planning
14 process, it has been recognized that roads are of a
15 concern to a wide variety of people and that's why the
16 roads planning Portion of the timber management
17 planning process has been given some highlight.

18 First of all, I would like to direct you
19 to page 109 of the Environmental Assessment Document
20 where the determination of the type and general
21 location of primary access system is shown under step
22 3, Part II and is given a fair amount of profile and
23 involves a lot of staff time and consultation time in
24 arriving at the location -- the best location for roads
25 to meet the needs.

1 Certainly the initiation may be two
2 people talking about getting into a particular
3 location, but I would remind that you that in the case
4 of timber management planning we are talking of
5 accessing timber and that's come about through the
6 steps 1, 2 and 3 -- the identification of where the
7 timber is and possible routes to get there.

8 I would also like to draw your attention
9 to page 165 of the same document which deals with the
10 subject of documentation.

11 Where there is a discussion of the
12 documentation requirements that are followed for
13 preparation of a timber management plan, which includes
14 the documentation for the public consultation portion
15 and, to be more specific, recognizing the interest that
16 is shown by users and ourselves for access, there are
17 specific supplementary documentation requirements for
18 access planning.

19 I would view it as very comprehensive
20 planning requirements and they are outlined on the
21 bottom of page 167. Included in there is a need for
22 formal documentation of a summary of comments that
23 would have been received from individuals. Their
24 comments would have been submitted through the public
25 consultation part, which would include the individual

1 letters that groups would have received and individuals
2 would have received, as well as comments and
3 submissions made at the time of the information centres
4 and, more importantly, I think what we find in there is
5 a requirement for the documentation of the rationale
6 for the various alternative road locations that are
7 proposed.

8 In the planning process there is a
9 requirement to propose more than one access route to a
10 given area and then the individual alternatives are
11 evaluated on the basis of public input as well as their
12 ability to meet the need which, in this case, primarily
13 would be to access timber and information items such as
14 Mr. Pyzer's outline of an additional benefit to another
15 user would be identified as a consideration under one
16 of those alternatives.

17 So in the section that would deal with
18 the rationale for why a particular road was chosen, I
19 would expect to see a summary of the pros and cons of
20 going various ways leading up to the selection of a
21 preferred alternative and that would be found in the
22 supplementary documentation that is appended to a
23 timber management plan.

24 MRS. KOVEN: Excuse me, Mr. Kennedy.
25 From what we have heard so far in the evidence there

1 has been more controversey about the closing of access
2 roads in recent years than there has been about the
3 planning and opening of access roads. That's what we
4 have heard in the evidence so far and what sorts of
5 plans and procedures are in place for closure.

6 I understand that in fact those decisions
7 haven't been taken in the light of full public
8 disclosure but, in fact, have been negotiated with
9 various groups who have been interested in that.

10 MR. KENNEDY: There is a provision built
11 into the consideration of the alternatives of the
12 various roads and we refer to it loosely as a use
13 management strategy which is done at the time of
14 proposing the road.

15 So prior to the road even being built and
16 at the time that various road quarters are being
17 selected, there is a development of a use management
18 strategy for each individual road and in there there
19 would be a discussion of the length of time in which
20 the access route is considered necessary, be it two to
21 five years, five to ten years, or ten years plus, and
22 the various kinds of measures that may be taken to
23 control assess in the area or, indeed, maintain access
24 a maintenance program.

25 And it is at that stage, during the

1 consideration of the actual location, where you can
2 consider the input from the various users and what that
3 will mean to the users over time that the program for
4 maintaining or, in fact, curtailing the road's use over
5 time would be decided.

6 MR. PYZER: If I could just add one point
7 too. When people talk about road closures and closing
8 roads, often certainly the ones that I am familiar most
9 familiar with, they are talked about closed before they
10 are even built.

11 And so the controversy - and take
12 controversy in quotation marks - is not that the road
13 has necessarily been opened and then closed, but the
14 fact that the decision was that it would be a closed
15 road prior to even building it.

16 So that decision would be made exactly as
17 Frank has outlined during the whole planning process.

18 MR. MARTEL: Didn't many of your problems
19 arise when a chain and a lock appeared across a road as
20 opposed to what you have just said, where the
21 discussion developed prior to the road even being
22 built; wasn't it when someone tried to go hunting or
23 fishing and there was a chain with a big padlock on it
24 that drove the public almost mad?

25 MR. PYZER: I think in terms of past

1 history, but I know of several closed roads in the
2 northwest region - we have got a number in our district
3 in fact - I do not know of one single closed road with
4 a padlock and a chain across it. They are closed under
5 the Public Lands Act and so you require a travel permit
6 to be on the road. We don't chain them and lock them.

7 MR. KENNEDY: I might make one exception
8 to that, Mr. Pyzer, though, that on occasion roads are
9 closed with a chain and a padlock at the time the
10 operations are ongoing in order to protect the values
11 that the operators have in the area, be that equipment
12 such as machinery, gas and oil, and some small
13 buildings that are there.

14 So it is the practice in some places to
15 put a chain and padlock on a road.

16 MR. PYZER: Usually too in that situation
17 it is not even the road necessarily that's totally
18 being closed. In many cases, what we will do is issue
19 a land use permit and we actually authorize the site.
20 In many cases, landings where there are large valuable
21 pieces of equipment, we would actually issue a land use
22 permit to that site and they could be chained off or
23 gated off in that case too.

24 MR. WILLIAMS: Q. I'm sorry, that was
25 your question.

1 MRS. KOVEN: No, go ahead, Mr. Williams.
2 What page are we on?

3 MR. WILLIAMS: I am going to page 86 now,
4 (a) in your testimony, Mr. Clark:

5 "Integrated resource management is the
6 management philosophy of the district
7 organization."

8 And here you again give us the definition
9 that has been given to us time after time from the
10 first panel on that integrated resource management is
11 the coordination of resource management programs and
12 activities so that long-term benefits are optimized and
13 conflicts between programs are minimized.

14 Now, Mr. Clark, you have read the
15 Baskerville Report?

16 MR. CLARK: A. Some time ago.

17 Q. Do you concur with the conclusions
18 and recommendations of that report?

19 A. I don't think I am prepared to
20 comment on it. It has simply been a considerable
21 amount of time since I have even looked at it.

22 Q. But the report was issued while you
23 were still a district manager. Did you not make any
24 changes in your district in response to that report?

25 A. I am not sure of the timing. I don't

1 recall making any specific changes but, as I say, my
2 problem is that I am not sure just when the report was
3 released and what I was doing in Wawa at the time.

4 Q. Now, I gather because of the passage
5 of time you are not in a position, or are you, to tell
6 the Board the general gist of what Dr. Baskerville had
7 to say about optimization of benefits?

8 A. I think that I would have to have an
9 opportunity to read the appropriate material in his
10 record before I would be in a position to comment.

11 THE CHAIRMAN: Mr. Freidin, you indicated
12 some time earlier that the Ministry I believe was
13 intending to call Dr. Baskerville?

14 MR. FREIDIN: That's correct.

15 THE CHAIRMAN: Could you give us any
16 indication when that might occur?

17 MR. FREIDIN: No.

18 THE CHAIRMAN: Before the end of the
19 hearing?

20 MR. FREIDIN: yes.

21 THE CHAIRMAN: Thank you.

22 MR. FREIDIN: It is not an easy decision
23 as to when to call Dr. Baskerville within the context
24 of our case.

25 THE CHAIRMAN: Has he been contacted at

1 this point?

2 MR. FREIDIN: Yes.

3 THE CHAIRMAN: Can you tell us whether he
4 is willing to attend?

5 MR. FREIDIN: Yes, he is willing to
6 attend.

7 THE CHAIRMAN: We shall await with
8 anticipation when you decide it is the appropriate
9 time.

10 Sorry, Mr. Williams, the name triggered a
11 thought.

12 MR. WILLIAMS: It has been a while, but
13 it has very much been gone over, in a fashion.

14 Q. Perhaps Mr. Clark, I can refresh your
15 memory and ask if you would endorse these particular
16 views. I am not going to quote extensively, believe
17 me, but there are a couple of points here that I think
18 are particularly relevant given that you and your panel
19 have been emphasizing the importance of the fact that
20 you are the delivery team at the district level.

21 Dr. Baskerville at page 71 and 72 of his
22 report talks about optimization benefits in this
23 manner. He says:

24 "The principle of integrating the
25 management of timber and non-timber

1 values is essential to the broad concept
2 of forest management. When timber is
3 Managed by altering forest structures,
4 other values are influenced. Therefore,
5 it is wise to design these effects on
6 non-timber values into the timber
7 management plan. The Ministry planning
8 process makes frequent reference to
9 Integration and to attainment of optimum
10 benefits from the forest. The principle
11 of optimization is that a measure of
12 utility is established based on the
13 available quantity of preferred
14 commodities. It must reflect the current
15 collective preference of decision-makers
16 for the various values in their various
17 forms."

18 Then he says on page 73:

19 "It is important to understand that the
20 approach used in MNR planning is not
21 achieving an optimum with respect to all
22 values obtained from forest. In fact, no
23 real optimization process is used to
24 determine a unique set of management
25 actions required to achieve a defined

1 best mix of benefits from the forest.
2 There is an attempt to take best local
3 site-specific actions, but a principle of
4 optimality states that when values are
5 functionally connected, as in the present
6 case, optimizing them individually in
7 local situations called local
8 maximization, will not result in the best
9 total solution or optimum for a unit."

10 THE CHAIRMAN: Mr. Williams, the Board
11 earlier as you are aware spent some time on
12 Baskerville's report. Rather than reading in large
13 portions of it, I think we would prefer if you would
14 ask the witnesses a specific question:

15 Do you agree with his conclusion?

16 MR. WILLIAMS: That is why he said he
17 didn't remember what specific things that Baskerville
18 was saying that I asked him whether he agreed with or
19 not. It is in that area there that I referred to in
20 the report that I asked his comment and whether he
21 subscribed to those views and were they the views of
22 his Ministry.

23 THE CHAIRMAN: Well, having been
24 reminded, Mr. Clark, can you answer that question?

25 MR. WILLIAMS: There was just one last

1 sentence there when you cut me off there, Mr. Chairman.

2 THE CHAIRMAN: All right, sorry.

3 MR. WILLIAMS: Q. "There is no reason to
4 expect that optimum value is being
5 achieved from the Crown forest despite
6 the frequent use of the words in planning
7 documents."

8 MR. CLARK: A. Your question then is, do
9 I agree.

10 Q. Yes.

11 A. I think he is giving rise to a
12 problem that all of, us not only at the field level,
13 have to deal with in this process and I think that in
14 answering - and this is a toughy, I think - it comes to
15 the very heart of the planning process.

16 THE CHAIRMAN: It is the value of
17 cross-examination, isn't it?

18 MR. CLARK: That's right, so I have been
19 told.

20 The way I would characterize and perhaps
21 address this issue is to say that all that we do in
22 management is a balance between art and science and I
23 think Mr. Baskerville is talking very clearly to a
24 large extent here about science.

25 He is talking about causal relationships

1 and being able to establish very clearly what your
2 objectives and what you can hope to achieve in an
3 integrated fashion between, for example, wildlife
4 values on the one hand and timber values on the other.

5 And I think all of us would like a very
6 high degree of predictability in the kinds of result we
7 can expect from our planning and management and I think
8 that that's basically the issue that he is dealing with
9 here.

10 I think it is fair to say that he is
11 right in the sense that we have not yet reached the
12 point where we can say, with assuredness, what the
13 specific results will always be, for example, with
14 respect to the identification and protection of
15 wildlife values versus timber values, that perhaps the
16 relationship isn't always as clear as all of us would
17 like. But I do believe, notwithstanding what he says,
18 we are moving in that direction?

19 And I harken back to some of the
20 testimony yesterday. While there isn't perhaps as much
21 science or predictability in terms of whether we are
22 optimizing benefits, I think that we do have a sense of
23 whether or not we are moving in the direction of the
24 specific objectives and targets that we have set for
25 ourselves.

1 And I think that you have to look at that
2 in the context of the Strategic Land Use Plan for a
3 particular area and the targets and objectives that are
4 established for individual programs; you have to look
5 at it in terms of the DLUGS, the District Land Use
6 Guidelines and I reference these because I think Mr.
7 McNicol explained much better than I can, how those
8 things are translated into management actions on the
9 ground.

10 In defence of where we find ourselves
11 where I think some of what he is saying is true, that
12 we use the term a little bit loosely, that we can't
13 always measure how closely we are getting to it, I
14 would once again refer back to Mr. McNicol's testimony.

15 The relationships that we deal with here
16 are extremely complex and we have to adopt positions
17 that allow us to make the best estimates we can with
18 the information and the science that's available to us.
19 And I think that that's what we are trying to say in
20 much of the evidence that we are providing here.

21 That we have adopted a position, for
22 example, relative to the protection of featured
23 species, we have done this because we believe by
24 protecting a variety of habitat we will protect a
25 variety of other flora and fauna.

1 We have developed guidelines for the
2 protection or enhancement of moose habitat, which we
3 believe are state-of-the-art in the sense that they
4 reflect the best knowledge that's available to us and
5 we believe that by adopting the use of these in the
6 processes that we have identified, that we are doing
7 the best we can currently do in terms of reaching for
8 that, I think rather difficult to define, optimum.

9 I am answering in a general way because I
10 think that to do so in a complex way would take for
11 ever and I am not sure that I would be in a position to
12 do it anyway.

13 Q. Given what you said, let me just
14 quote you three more sentences on this point to see
15 whether you are really getting at the concern expressed
16 here by Dr. Baskerville.

17 He says:

18 "An attempt to set attainable objectives
19 would greatly enhance the focus of
20 management programs. The isolation of
21 timber management planning from these
22 other concerns means that the other
23 values can only enter the timber
24 decisions, which are the only real
25 control and change in forest structure

1 over time, as constraints. They are not
2 in fact part of a central objective."

3 Now, the things that you have told me,
4 are they really addressing that critical concern?

5 A. What page are you on?

6 Q. Page 73?

7 A. Which paragraph?

8 Q. At the bottom. I am sorry that may
9 go over to the top, that's the top of 74, I am sorry.

10 A. I make the distinction, I think,
11 between art and science again. We are dealing with, as
12 I think we have pointed out, an extremely complex
13 situation and we have had to adopt a system that will
14 allow us to be sensitive to the complexity of that
15 particular situation.

16 I use the example of wildlife because I
17 knew that, for example, that we have moose and we have
18 identified objectives for moose. We believe that they
19 are attainable and the evidence that we have suggests
20 that we are moving in the direction of meeting those
21 objectives.

22 And so that cause and effect
23 relationships are somewhat more clearly visible in
24 situations like that and certainly predictability is
25 greater.

1 But we are dealing with an incredible
2 range of potential impacts here. And while it is nice
3 to talk about state-of-the-art in these matters is well
4 beyond these stages, I have yet to see where somebody
5 has been able to come up with an effective means of
6 dealing with a whole host of what I would characterize
7 as values; the value of aesthetics, the value of being
8 able to view wildlife, the value of a whole host of
9 things like that which I believe it would be nice to
10 quantify, but at this point time we are not really able
11 to clearly state and articulate very specific
12 objectives and targets.

13 And I think that what we have tried to do
14 in that particular case is adopt a planning system that
15 allows for that kind of information to be inputted and
16 it allows us to be sensitive to it and, yes, to deal
17 with the resolution of those kinds of issues at the
18 local level.

19 Q. Let me ask you this, Mr. Clark:
20 Isn't Dr. Baskerville's point really that in the field
21 timber management is consistently winning over fish and
22 wildlife management, and other non-timber resource
23 consideration?

24 A. I don't know. I think you would have
25 to ask Mr. Baskerville. The point I would make is I

1 don't think that's the case. We have explained, and
2 will explain in more detail, that we do have an area of
3 concern process, the values that are identified are
4 input to this process and, you know, a very significant
5 amount of our time in going through the timber
6 management process is in the identification of these
7 values and the development of strategies for
8 recognizing and protecting them.

9 MR. PYZER: A. Mr. Williams, if I could
10 add one point and it happened subsequent to Mr.
11 Baskerville's report and it's an extremely important
12 initiative, that was the preparation of District
13 fisheries management plans is one example.

14 We now have, as Mr. Ward indicated --
15 well, will have within this year, a fisheries
16 management plan for every district in northern Ontario.

17 And so from a fisheries perspective, we
18 have sorted out, we believe, most of those problems
19 from a pure fisheries perspective and where we see the
20 integration of the fisheries management plan and timber
21 management plans is that in many respects the timber
22 management plan will help us deliver the objectives of
23 our fisheries management.

24 And that's becoming more the issue now
25 is -- and more the art, certainly as Mr. Clark is

1 talking about, how we integrate these plans because
2 clearly from a fisheries point of view we have done -
3 I'll use Kenora District as an example - we have done,
4 we have produced a fisheries management plan for Kenora
5 District and one of the key mechanisms of achieving
6 many of the targets that we want to achieve is through
7 the timber management planning process. They will help
8 us, they will assist us, timber management will assist
9 us in delivering many of those targets.

10 And I think as certainly Mr. McNicol
11 talked about yesterday, from a wildlife perspective we
12 are going to be looking at the timber management
13 planning process to deliver a lot of the objectives of
14 the wildlife program.

15 So rather than viewing them as in
16 conflict with each other, we now have the opportunity
17 of integrating them and it's almost synergism, we now
18 instead of looking at three separate programs are
19 coming up with a sum total of three, by looking at
20 those three programs, we are going to come up with six.

21 MR. CLARK: A. Mr. Williams, just one
22 point here. And you have to understand that I haven't
23 seen this for a while and I am still reading it again.

24 He talks about the isolation of timber
25 management plannings from these other concerns.

1 I am not sure of all the details, and
2 obviously we will have to ask Mr. Baskerville, or
3 perhaps you will, but I know that when he looked at
4 this, I am not sure, but I suspect that in his
5 evaluation he was looking at plan, for example, that
6 were probably done under the old system.

7 The point I would make here is that there
8 is anything but isolation of timber management from
9 these other concerns. I think the point we have made
10 over and over again and will do so throughout the
11 evidence, is that we have a very detailed area of
12 concern process that we go through for identifying
13 other values and considering them in the planning
14 process.

15 And I think it is extremely important to
16 recognize that this is a significant part of the
17 process that gives, I think, full value to those other
18 issues where there are other values where they are
19 identified.

20 Q. At what point of time does the area
21 of concern process enter into the timber management
22 planning activity?

23 Do you want to answer that, Mr. Kennedy?

24 MR. KENNEDY: A. Yes, Mr. Williams I
25 would like to take a stab at that.

1 I would say that there are two parts that
2 lead up to the area of concern planning process. The
3 first one -- again, if I could refer you to page 109 is
4 a road map, if you will, that I would like to refer to.

5 Q. What document are you referring to?

6 A. Page 109 of the Environmental
7 Assessment Document.

8 Q. 109, yes.

9 A. I would like to refer to it
10 constantly because it provides a very good summary of
11 the steps in the planning process and the headings that
12 are on the page provide an easy reference.

13 The three parts that I would refer to in
14 the area of concern planning process are the values map
15 which is produced under step 1 as a summary of the
16 information that's assembled and analysed.

17 Q. Which step 1, there are sub-stages
18 here.

19 A. On the left-hand side of the page.

20 Q. Yes, I am looking at that.

21 A. Where it says step 1 at line 5 I
22 believe it is.

23 Q. All right. Simply an analysis of
24 background information. Okay.

25 A. Yes, that's where the values map

1 would be produced during the production of the timber
2 management plan.

3 Q. I was looking at the sub, Roman
4 numerals I, II and III and I didn't know whether you
5 were looking at that.

6 A. I would say that would be one of the
7 very preliminary steps in the area of concern planning
8 process. The next step you will find under is step 3
9 sub-step 2 which is at line 18 which is the
10 identification of preliminary areas of concern.

11 Indeed, the details --

12 Q. Are you saying that that's where it
13 really starts to intensify, the involvement of these
14 other non-timber issues at that stage?

15 A. It intensifies in that it becomes the
16 first identification, in a geographic sense, of where
17 values that are present in the land base may be
18 overlapped by eligible stands for harvest.

19 It really isn't until step 4 I will add,
20 sub-step 4 at line -- which is indicated here at line
21 30 where the identification of specific areas of
22 concern and those are the areas where particular value
23 or feature may be in or adjacent to stands that are
24 selected for timber management activities for the
25 five-year period.

1 That's the area -- it is at this step in
2 the process, the planning process where the specific
3 analysis is done of the potential impacts of harvesting
4 activities or, in fact, if normal operations can
5 proceed an evaluation of modified operations.

6 That's a subject matter of two appendices
7 that are contained in the document, Appendice 1, I
8 believe, which is the area of concern planning process
9 for modified operations and Appendice 2 which is
10 specific to a road planning where if you have a value
11 or feature that may coincide with or adjacent with a
12 road, then there is a separate set, a more detailed set
13 of area of concern planning process.

14 So it is at those two -- it's at the last
15 part specifically where individual values and features
16 would be dealt with through the area of concern
17 planning process, but I think you can see from the
18 other two items that I mentioned here, the values map
19 and the preliminary identification of areas of concern
20 that, again, the other values are not isolated from
21 timber management planning, they are a very integral
22 part of it and it occurs throughout the planning
23 process.

24 And in this case, the planning process
25 lasting perhaps as long as one year.

1 Q. And we will have an opportunity to
2 pursue that in greater depth in Panel 8?

3 A. That's right. And I might add too
4 that the area of concern planning process has some very
5 detailed documentation requirements that are also
6 outlined in the supplementary documentation section
7 that begins at page 165 and the panel members for Panel
8 15 will be dealing in some detail on the explanation of
9 the entire planning process and part of that
10 explanation will include discussion of the area of
11 concern process.

12 Q. I said Panel 8, it is Panel 15?

13 A. Panel 15, yes.

14 Q. What did you say about page 165?

15 A. I believe 165 is the location where
16 the discussion on supplementary documentation.

17 Q. Yes..

18 A. The documentation in the timber
19 management plan itself is outlined on page 165 and 166
20 with the specifics given on page 167 an 168 for the
21 supplementary documentation which are additional
22 information that is collected during the planning
23 process.

24 And by that I refer to both the
25 information submitted by publics and individuals during

1 the public consultation, as well as the evaluation of
2 road alternatives and the details of the evaluation
3 consideration given under the area of concern planning
4 process. They form a separate set of binders normally
5 that accompany the timber management planning.

6 Q. Mr. Pyzer, you had referred to how
7 this problem as being addressed in the fisheries
8 management area and you --

9 MRS. KOVEN: What problem is that, Mr.
10 Williams?

11 MR. WILLIAMS: I'm sorry?

12 MRS. KOVEN: What problem were you
13 talking about?

14 MR. WILLIAMS: About resolving this
15 Baskerville concern and how the timber management was
16 being dealt with in isolation and the non-timber
17 matters coming in only in the context of constraint
18 factors, rather than as being issues to be dealt with
19 equally with the timber management consideration.

20 It is in that context that I think Mr.
21 Pyzer was trying to assist us in trying to resolve the
22 dilemma that or concern that Mr. Baskerville by saying
23 that this is being addressed, as I understand it, Mr.
24 Pyzer, because of the formal district fisheries
25 management plans that have been developed.

1 Q. And are you saying then that now we
2 have some formal type of documents at least in that
3 non-timber sector that can be brought to the bargaining
4 table, if I can use that term, when they start the
5 timber management planning process that gives them a
6 more formal base to work from, rather than dealing with
7 things on an individualized informal basis from the
8 non-timber side?

9 MR. PYZER: A. Obviously still when we
10 get to timber management planning, we are going to be
11 dealing with site-specific individual issues if you
12 will. Having gone through a fisheries management plan,
13 I generally accept and say yes to your question.

14 I think that's exactly -- we now have a
15 much better information business in terms of fisheries,
16 we have looked at the fish problems within the
17 districts, some of the issues, we examined the
18 strategies.

19 In Kenora District as an example we
20 printed 6,700 tabloids of our background information
21 package. There is not a person who lives in Kenora
22 District that has a mailing address that did not get a
23 copy of our tabloid.

24 Q. Is there a timber management plan
25 being prepared in your area now?

1 A. Yes, there is.

2 Q. How many -- more than one?

3 A. Right now both of the Boise units,
4 the backwash to the north and the Patricia to the north
5 and east are being prepared, and the Aulneau and the
6 Minaki Crown managements will be up for plan
7 reproduction in the next two, three years.

8 Q. So this particular fisheries
9 management plan will be on the table when they --

10 A. Absolutely and it will provide us
11 with some extremely good direction.

12 THE CHAIRMAN: Mr. Williams, I think we
13 might consider taking a morning break at this time.

14 MR. WILLIAMS: All right, Mr. Chairman.

15 THE CHAIRMAN: Mr. Freidin, I just wanted
16 to ask one short question.

17 If and when Dean Baskerville is
18 called, -- not if, when, is he going to have been
19 provided with the Ministry's timber management planning
20 process that you are putting before the Board, if that
21 differs in any way from what was available to him when
22 he wrote his report?

23 And my reasoning behind that question is,
24 and I think Mr. Clark alluded to it briefly, was: If
25 he wrote his report based on his study and

1 documentation that differs from what is being presented
2 to the Board for approval, then obviously the context
3 of his report may be somewhat different.

4 And if he is going to spend some time
5 testifying before the Board and I am sure questioned by
6 some of the parties, it would be of more value, in the
7 Board's view, if he could contrast his earlier opinions
8 with what is currently before the Board, rather than
9 being forced into a position of saying that I wrote my
10 report based on certain information and I can't really
11 express an opinion on what is currently before the
12 Board because that's not what I formulated my report on
13 originally.

14 In other words, I think the Board is
15 interested in having as much value, if you can put it
16 that way, from his appearance - if and when he
17 appears - based on what we are looking at, rather than
18 information or a planning process which might have been
19 different when he formulated his earlier report.

20 And I guess the Board's suggestion is, it
21 would be helpful if he were provided in advance -- well
22 in advance with what's currently before the Board so
23 that he could review it and be prepared, if he is, to
24 give his opinion.

25 MR. FREIDIN: I will take your comments.

1 into consideration.

2 THE CHAIRMAN: Okay. We will break for
3 15 minutes.

4 Thank you.

5 ---Recess taken at 10:50 a.m.

6 ---Upon resuming at 11:15 a.m.

7 THE CHAIRMAN: Thank you, be seated.

8 Very well, Mr. Williams, please continue.

9 MR. WILLIAMS: Q. Mr. Clark, I had clean
10 up questions and --

11 THE CHAIRMAN: Excuse me. Ms. Tieman,
12 would you mind trying to turn up the temperature on
13 that thermostat THERE, please.

14 MS. TIEMAN: Is that what it is? ,

15 THE CHAIRMAN: I don't know. Is that a
16 thermostat?

17 MR. FREIDIN: Turn it up.

18 MS. TIEMAN: They are lights. I will
19 look after it.

20 THE CHAIRMAN: Sorry, Mr. Williams.

21 MR. WILLIAMS: Q. Mr. Clark, just before
22 moving on to another area there are a couple of
23 questions that touch in different ways on some of the
24 things we were discussing earlier.

25 I wanted to ask you what special training

1 does a district manager receive to ensure a uniform
2 approach to deciding which species of flora or fauna
3 warrant close examination for a particular site.

4 In other words, how can -- I will stop
5 there, if you can answer that and then I'll move from
6 there.

7 MR. CLARK: A. I think it is fair to say
8 that generally district managers don't receive training
9 which permits them to determine which -- did you say
10 flora and fauna?

11 Q. Yes.

12 A. Now, that does not mean, of course,
13 that they don't bring experience because of other jobs
14 or because of their professional orientation.

15 I think the point I would want to make,
16 and you have really seen it at work here today, is that
17 district managers provide overall direction, they are
18 responsible for decisions, they are responsible for
19 hiring staff, motivating them and training them and
20 that the staff are their brain cells.

21 It is always a little analogy I used.
22 And if I had to make decisions of those kinds, I had to
23 make reference to my staff who had those
24 qualifications. And in the absence of my staff having
25 those qualifications, I had to make reference to other

1 technical or scientific experts within the Ministry and
2 in the absence of getting -- in that they could reside
3 at the regional level, they could reside in, for
4 example, fisheries assessment units in the TDUs or they
5 could reside with the individual programs in main
6 office.

7 In the absence of getting assistance
8 there, I could make reference to the scientific
9 community outside the Ministry or outside government.

10 So that you're a decision-maker but your
11 decisions are guided and bounded by your own staff,
12 staff at the region, main office and other parts of the
13 organization or because of the advice given by
14 scientific experts, if that's what's required outside
15 government.

16 Q. Well, at page 65 of your evidence,
17 paragraph 7, it is stated that:

18 "The district manager has the ultimate
19 responsibility to ensure that adequate
20 information has been collected to make
21 informed resource management decisions."

22 Then I believe it was stated later that
23 the ultimate decision-making process rested with you,
24 the district manager.

25 Was that when -- I believe it was early

1 in the testimony on evidence-in-chief that Mr. Pyzer, I
2 think, caught you up short and suggested what really
3 happens is what you just explained?

4 A. What really happens is what I
5 explained, but I think ultimate responsibility rests
6 with the district manager. I know that in Mr. Pyzer's
7 case and certainly in my case when I was a district
8 manager, there was no doubt in my mind as to who had
9 responsibility for the decisions and part of that
10 responsibility was ensuring that I had contacted the
11 right people and got good advice.

12 Q. So then on that basis it wouldn't, or
13 would it have any effect on what happens at a
14 particular district if the district manager in question
15 happened to have, say, a strong background in forestry
16 rather than coming from a fish and wildlife area of the
17 discipline?

18 There wouldn't be any bias that would
19 come with those particular areas of training because
20 that district manager is relying on his resource
21 people, is that what you are saying, or is there not
22 still a possibility of bias showing through in the
23 decision that you have to make based on the best
24 evidence produced to you by your staff people?

25 A. There is some sort of residual

1 loyalty. I am sure there is. We all carry that kind
2 of baggage around with us, but we are accountable for
3 our decisions and I think that the thing that the
4 Ministry stresses in the context of its district
5 managers is they take a strong IRM perspective and they
6 are accountable for decisions and their decisions are
7 audited.

8 They are audited by the public, they are
9 audited by the region and, to some extent, by main
10 office. So that you may carry that kind of baggage
11 around with you, all of us do, to some extent to us.

12 Q. When you say baggage, you mean bias?

13 A. Yeah, you can call it bias, if you
14 like. I guess the point I am making here is it is not
15 particularly relevant ultimately because I think that
16 the decisions that you make you are accountable for and
17 you are audited and you know, looking, for example, at
18 timber management planning, I had to sign the plan
19 after it was completed at the district and when I
20 signed it I was signing a document that I felt was
21 satisfactory and that the process had been followed
22 adequately.

23 But at the moment I signed that it was
24 sent on to the regional office where it underwent a
25 technical review in the various program groups: Fish,

1 wildlife, parks, lands, forests reviewed the contents
2 of that plan and I believe most regions have a formal
3 review process and, through that process, they make
4 recommendations to the regional director.

5 So that the decisions, the ultimate
6 decision that I made as to the appropriateness of that
7 plan is very closely scrutinized at the region and
8 elsewhere.

9 So that regardless of what particular
10 bias, if you want, that I might have that, would
11 obviously be something that would be looked at very
12 closely.

13 Q. So you are suggesting then, are you,
14 that the objectivity factor is held over your head by
15 those above who supervise or observe--

16 A. Well, to some extent --

17 Q. --what people are doing as a district
18 manager, even though you make the ultimate decision at
19 that level?

20 A. I don't want to suggest by any means
21 that district managers are not objective. As I said,
22 they are encouraged in their particular jobs to take a
23 strong IRM perspective, integrated resource management.

24 In doing so, the major responsibility,
25 when we talk about optimization of values and benefits,

1 I think what we are talking about is recognizing the
2 existence of a whole range of program interests and
3 giving them fair accommodation in the process and that
4 is a role that the district manager is very much the
5 watchdog in the district when it comes to that
6 particular function.

7 Q. So that if I understand you
8 correctly, in the situation or example I gave, the
9 ultimate responsibility then for deciding whether a
10 species study would be undertaken or not would be based
11 on -- it would be your decision, but based on the best
12 judgment of your professional staff you, is that right?

13 A. Absolutely. Staff under me an over
14 me.

15 Q. And with you, that's probably a
16 better way to put it.

17 Page 79, the second paragraph, the last
18 sentence. I think that this was again a matter that
19 was discussed at some length in the early stages of
20 this panel, but I just want to -- I have one question
21 for you with regard to the last sentence that is stated
22 that:

23 "The kind, amount and specificity of
24 information required is dependent on the
25 specific resource management decision

1 being made."

2 Mr. Clark, is that not inevitably
3 qualified by taking into consideration the necessity to
4 take into consideration the manpower and support
5 funding resources that are at your disposal to go out
6 in the field and get this kind of needed information?

7 A. Yes, it is.

8 Q. Is it a significant restraint, from
9 your experience?

10 A. It is a significant consideration in
11 arriving at a decision as to what to collect and how to
12 collect it and, in some instances, it can be a
13 constraint.

14 Q. If that is a limitation, would it not
15 affect the quality of the process and the result of
16 your management decision?

17 A. It can.

18 Q. As a policy officer, does this in
19 fact -- is this a real factor that exists within the 34
20 districts of the Ministry that are within the area of
21 the undertaking?

22 A. When you say is it a real factor,
23 what are you saying?

24 Q. Is this a qualification that all of
25 the district managers are confronted with or a restraint

1 rather than a qualification, a restraint that they are
2 experiencing and from which they have to operate?

3 A. It is a reality that they all have to
4 cope with every day in a significant way.

5 Q. What do you mean by significant?

6 A. Well, they have limited number of
7 staff, limited number of resources, in terms of men,
8 machinery, they have limited amount of money and within
9 those fixed limits they have to set priorities that are
10 reasonable and practical.

11 Q. Is it so significant as to impair the
12 whole integrated resource management process that you
13 have been telling us about over the course of this
14 panel?

15 A. It certainly conditions the way we
16 collect information and, to some extent, the kind of
17 information we collect.

18 For example, one of the reasons we have a
19 policy that deals with wildlife information
20 requirements for use in timber management planning was
21 within -- we really had to look at two sets of
22 parameters, what was practical and what was required
23 for timber management planning.

24 And those were two very important
25 considerations in the development of that policy and

1 we attempted to develop a policy that would provide us
2 with a practical and, if you want, feasible way of
3 consolidating information that was critical to wildlife
4 decisions while, at the same time, doing so in a way
5 that was practical in terms of the staff and the
6 monetary constraints that we were dealing with or the
7 budgets that we were dealing with.

8 Q. Would considerations of practical and
9 feasible introduce an element of unacceptable
10 compromise?

11 A. It can.

12 Q. And how do you cope with that
13 situation?

14 A. Well, there is a variety of ways.
15 We, I believe in Panel 1, talked about work program
16 planning and in that process districts produce budgets
17 and they are given guidance in the production of those
18 budgets; there are Ministry corporate guidelines that
19 establish priorities; there are often regional
20 guidelines, sometimes northern Ontario guidelines,
21 which further supplement those that provide a context
22 within which budgets are developed.

23 In that process, the district has an
24 opportunity to identify within the dollars that are
25 available the work that it can do. In addition to

1 that, it can identify additional work that it thinks
2 needs to be done and that process -- that particular
3 budget is then dealt with in the context of the region
4 and the priorities that have been established for the
5 region and commitments that have been made elsewhere,
6 for example, in other districts.

7 So if money is an issue, you identify the
8 need through work program planning, you identify the
9 work that needs to be done, what it will cost, and
10 through that process the organization makes judgment
11 about the necessity of doing that work and the level of
12 funding that will be provided.

13 Q. In the district, is the fish and
14 wildlife budget, for example, kept separate from the
15 timber budget?

16 A. Well, yes, there are separate
17 allocations to fish and wildlife and there are to
18 timber.

19 I guess the one point I would want to
20 stress here is that this is an accounting procedure and
21 that there is obviously considerable overlap in terms
22 of the work that is done and the implications that --
23 the impact it will have either in terms of the
24 wildlife, fisheries or timber program.

25 Q. Well, yes, but as an accounting

1 procedure, if it means fewer trained professional
2 personnel that goes -- the impact extends far beyond it
3 being an accounting procedure; does it not?

4 A. Yes.

5 Q. Well, under those circumstances, if
6 fish and wildlife say got less staff and financial
7 resources, would this not then leave or create a
8 situation whereby on the other side of the coin, the
9 timber management people would have a much greater
10 opportunity and persuasive ability and resources to
11 influence the decision-making process in the integrated
12 resource management process?

13 A. In the limit I suppose that could
14 exist, the possibility exists if one program is totally
15 underfunded and, in that context, is not able to, first
16 of all, identify -- is not able to generate sufficient
17 amount of information on the resources that they are
18 concerned to it, that can be a constraining factor.

19 Q. As a policy officer, can you advise
20 the Board if this situation is more than hypothetical
21 and is a reality within the 34 operating districts
22 within the area of the undertaking?

23 A. I don't really believe I can speak to
24 every district in the area of the undertaking.

25 Q. As a policy officer, you wouldn't

1 have -- you wouldn't be aware of that, you wouldn't
2 have that information at hand?

3 A. Not at this particular time.

4 Q. To what extent could you speak to
5 that question, on a regional basis or on a one district
6 basis or...

7 Can you illustrate the point for us as
8 to -- give us a case in point where that problem
9 exists. How far can you assist us in that -- taking
10 that hypothetical to the actual?

11 A. I don't think I can -- I can't give
12 you an example right now and I think that the -- I am
13 just trying to think of an appropriate way of answering
14 you here.

15 As policy officer I don't deal
16 specifically with the budgets of the various districts
17 and regions and, as a result of that, I am not really
18 party to the details as to, for example, how much is
19 being allocated to the various programs and,
20 specifically, how that relates to the development of
21 timber management plans.

22 I think, as a general rule, given the
23 procedures that we have established in timber
24 management planning and the policies that we have
25 identified for collection of data, for example, the

1 reference I made to the collection of wildlife data, if
2 funding levels are adequate.

3 Q. I use the term hypothetical. You had
4 suggested it was a reality and fact of life, in varying
5 degrees. The latter is the case; is it not?

6 A. Mm-hmm, I am sure it is.

7 Q. Mr. Clark, I would like to just move
8 in another direction here for a few moments and if you
9 could assist myself and the Board. Again, I just want
10 to stay general considerations for the moment.

11 Would you agree that, and is it your
12 opinion that -- first of all, let me back up, let me
13 ask you this: I presume you have been following all of
14 the evidence that's been adduced through all of the
15 preceding six panels; have you?

16 A. Reasonably closely.

17 Q. And is it your opinion that to date
18 the Board has been emphasizing and explaining really
19 the resource management tools that are used in timber
20 management planning and programming rather than in the
21 non-timber sector?

22 A. I believe so. I think that until
23 this particular -- well, Panel 6, that was definitely
24 the case.

25 Panel 6 there has been obviously a

1 significant change in content message.

2 Q. So we are starting to learn about the
3 other management tools; is that a fair term to use, in
4 dealing with all those plans?

5 A. Certainly in the context of this
6 particular panel and in Panels 8 through 13 that's the
7 case.

8 Q. So we will learn much more again
9 about these non-resource management tools that are
10 used?

11 A. Well, I would say resource management
12 tools, but they relate to other values.

13 Q. All right.

14 MR. FREIDIN: I think probably Mr. Clark
15 would agree that he should have referred to 8 to 14, 14
16 dealing with access.

17 MR. CLARK: Right.

18 THE CHAIRMAN: I think in view of that,
19 Mr. Williams, we should probably move onto a different
20 area if we are going to be hearing on this topic from a
21 variety of other panels.

22 MR. WILLIAMS: Well, I just wanted to
23 establish, if I might, Mr. Chairman, with a couple of
24 questions you will perhaps see where I am going on this
25 and I ask your indulgence.

1 Q. Do you agree that the purpose of the
2 undertaking -- we are agreed, aren't, we that the
3 purpose of the undertaking is to provide timber
4 management, to ensure continuous and predictable supply
5 of wood for the forest industry.

6 Now, can one, under those circumstances,
7 realistically discuss integrated resource management
8 without knowing what all of the management tools in the
9 non-timber resource side, even though you are dealing
10 with that area which deals with impact and not the
11 direct application on the --

12 MR. CLARK: A. I am not sure I
13 understand your question.

14 Q. To date we have been considering all
15 of the management tools that are used with regard to
16 the purpose of the undertaking, which was cited to you.

17 In order to realistically discuss
18 integrated resource management and to apply it, would
19 you not agree that the professionals involved have to
20 have an equally sound awareness and knowledge and
21 understanding of the management tools, the programs,
22 the guidelines, the operating manuals that are used in
23 the non-resource sector of the Ministry's operation?

24 A. Yes, I think it is essential.

25 Q. Do the staff on the forestry side of

1 district operation receive some type of instruction or
2 education on all the non-timber -- I should say, the
3 the fish and management activities that go on in that
4 district, including the management tools that those
5 professionals use to deal with their responsibilities?

6 A. Yes, they do. I referenced earlier
7 the courses that we are currently providing to the
8 planning teams, planning teams being made up of the
9 representatives of various programs in the district
10 including, obviously, forest resources.

11 And those courses provide -- much of the
12 content of those courses is on the use of these tools
13 such as the fish guidelines, the moose guidelines,
14 tourism guidelines.

15 Q. And that applies on the other side
16 too as far as the people in the fish and wildlife
17 programs, they have to be equally familiar with the
18 programs on the timber side?

19 A. They certainly have to be familiar
20 with them. I guess the point I would emphasize is that
21 through the process of working as an IRM team, people
22 become very familiar with tools because they have to in
23 order to make meaningful input.

24 Q. The Strategic Land Use Plans,
25 District Land Use Guidelines, there are Forest and

1 Fishery Management Plans, the Provincial Guidelines,
2 there are operational manuals, your resource and
3 environmental manuals, are these all of the basic
4 management tools that your professional staff have to
5 deal with in practicing integrated resource management?

6 A. I am not sure the list is exhaustive,
7 but that's a pretty good summary of the range of tools
8 that would normally be used by staff in developing
9 these plans.

10 Q. I will refer you to page 92, Appendix
11 A, that's Appendix A to your paper and it is a summary
12 of key responsibilities.

13 This one pertains to a position title of
14 a district manager. You describe the qualification
15 criteria for district manager to include, and I quote,
16 at Item No. 3 on that page:

17 "Extensive knowledge of natural resource
18 management and related Acts, regulations
19 and policies pertaining to resource
20 management programs."

21 And then I would refer you to page 93
22 and, again, one of the qualification criteria for a
23 forest management supervisor is:

24 "A thorough knowledge of the Crown Timber
25 Act, its regulations and other related

1 Acts and Ministry policies and
2 procedures."

3 And then finally on page 94,
4 qualification criteria for a forest operations manager:

5 "Must have a basic understanding of
6 forest management practices and knowledge
7 of relevant legislation and policy."

8 Do you agree that in all cases these
9 senior staff people that have been identified must have
10 a working knowledge about the legislation?

11 A. I would answer by saying, I always
12 kept the relevant legislation in the top drawer of my
13 desk.

14 In other words, I had to be aware that it
15 was there, I had to have some knowledge of the content,
16 and I had to know who I would have to talk to in order
17 to give good advice on its application.

18 Q. Throughout the hearings I think there
19 has been frequent reference to the Crown Timber Act
20 dealing with the timber management side of the equation
21 and we have certainly spent some considerable time
22 talking about and questioning on the Endangered Species
23 Act.

24 Can you identify any other legislation
25 that is central to dealing with fish and management

1 issues?

2 A. Well, the one that comes to mind
3 immediately is the Lakes and Rivers Improvement Act.

4 Q. There is an act that I haven't heard
5 mentioned in this panel so far and I find it
6 incomprehensible, Mr. Clark, because it is my
7 understanding that the Game and Fish Act is the central
8 authority and basis on which you do all of your fish
9 and wildlife management; is that not so?

10 A. It certainly plays a very significant
11 role.

12 Q. With regard to that legislation, is
13 there any other legislation that you would consider to
14 be fundamental to making this process work?

15 A. You asked me what the main ones were
16 that -- I almost need a list in front of me to do it.
17 I know that in Panel 1 we identified most of the acts
18 which we had some knowledge of.

19 Q. Right. Can I suggest to you to
20 expedite matters, would you consider that the Migratory
21 Birds Convention Act and the Fisheries Act may not have
22 some small role to play in this process?

23 A. Yes.

24 Q. Would you consider those particular
25 four pieces of legislation, Game and Fish Act,

1 Endangered Species Act, Migratory Birds Convention Act
2 and Fisheries Act to be central to the undertaking of
3 fish and wildlife management and all of the programs
4 associated therewith?

5 A. Yes, I think in a general way, yes, I
6 would agree.

7 MR. WILLIAMS: Mr. Chairman, I am sorry,
8 yesterday I heard your request that documents be
9 circulated before commencement of the hearings and
10 that, but we just didn't have time to respond to that
11 request. In the future, we will try to accommodate
12 you. There will be documents I will be entering as
13 exhibits through the course of this cross-examination.

14 THE CHAIRMAN: Do you have copies for
15 counsel?

16 MR. WILLIAMS: Yes.

17 THE CHAIRMAN: And the Board?

18 MR. WILLIAMS: I do, Mr. Chairman. I
19 would like at this time, if I could, to distribute to
20 the Board the copies of four documents to be entered as
21 exhibits.

22 The Game and Fish Act, the Migratory
23 Birds Convention Act, which is a federal document, and
24 the Federal Fisheries Act and, along with that, I think
25 you will find as well the Ontario Fisheries

1 regulations.

2 THE CHAIRMAN: How, Mr. Williams, is all
3 of this legislation related to the evidence that was
4 adduced in direct with this particular panel?

5 MR. WILLIAMS: I think it is going to
6 play a major role in the things that I have to discuss
7 and I will be discussing with Mr. McNicol and Mr. Ward
8 as I didn't come to them and I think you will come to
9 appreciate and understand the relevancy of this
10 legislation at that time, Mr. Chairman, if you will
11 bear with me.

12 And if I might in conjunction with those
13 four statutes, because they will be referred to later
14 as well, is a document entitled Sport Fishing
15 Regulations Summary, 1988 and Hunting Regulation
16 Summary, Fall '88/Spring '89.

17 THE CHAIRMAN: Well, I think for the
18 purposes of the record, although it is not always
19 necessary to exhibit specifically Acts of the
20 legislature, specific exhibits. If you are going to be
21 referring to these documents, perhaps it would be
22 easier --

23 MR. WILLIAMS: Yes, I am, Mr. Chairman,
24 and that's why I thought it would facilitate things.

25 I realize that, as public statutes, they

1 are taken as read, but because there will be reference
2 made to them, I thought it would be of assistance to
3 have them.

4 THE CHAIRMAN: Okay. I guess there is no
5 particular order you want these in. Can we just do
6 them in the order that I happen to pick them up; does
7 that matter?

8 MR. WILLIAMS: I leave it your
9 discretion, Mr. Chairman.

10 THE CHAIRMAN: Okay. The Game and Fish
11 Act and Endangered Species Act which appear to be as
12 one package would be Exhibit 359.

13 MR. FREIDIN: Which one was 359?

14 MS. SWENARCHUK: The Game and Fish Act
15 and the Endangered Species Act aren't actually
16 attached, I think it is just on the heading.

17 THE CHAIRMAN: Oh, I am sorry, it is just
18 just the Game and Fish Act. Okay. The Game and Fish
19 Act will be Exhibit 359.

20 ---EXHIBIT NO. 359: Copy of the Game and Fish Act.

21 THE CHAIRMAN: The Fisheries Act will be
22 Exhibit 360. The Migratory Birds Convention Act will
23 be Exhibit 361 -- sorry, if we go back to 360, it is
24 really the Ontario Fisheries Regulations under the
25 Fisheries Act.

1 ---EXHIBIT NO. 360: Copy of Ontario Fisheries
 Regulations.

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4 ---EXHIBIT NO. 362: Copy of Fisheries Act.

5 MR. WILLIAMS: Yes.

6 THE CHAIRMAN: That is Exhibit 360 and
7 the Fisheries Act itself will be Exhibit 362.

8 MS. SWENARCHUK: 361.

9 THE CHAIRMAN: Sorry.

10 MS. SWENARCHUK: It's 361.

11 MR. WILLIAMS: The Regulations are 361.

12 MRS. KOVEN: No, that's Migratory Birds.

13 THE CHAIRMAN: No, I am sorry. I had --
14 the Regulations are Exhibit 360. We had already marked
15 the Migratory Birds Convention Act as Exhibit 361. The
16 Fisheries Act I suppose could be exhibited as 362.

17 MR. WILLIAMS: And then the Game and Fish
18 Act was what, 360 -- no, 359 was it?

19 THE CHAIRMAN: 359.

20 MR. FREIDIN: The regulations under the
21 Fisheries Act is 360 and the Fisheries Act is 362?

22 THE CHAIRMAN: Right.

23 MR. FREIDIN: And 361 is the Migratory
24 Birds Convention Act.

25 THE CHAIRMAN: That is correct. And just

1 to recap, the Game and Fish Act is 359.

2 Okay. Now, the Hunting Regulations will
3 be 363 and the Sport Fishing Regulations will be 364.

4 MS. SWENARCHUK: Mr. Chairman, you should
5 specify the date of the regulations since they change
6 frequently.

7 THE CHAIRMAN: Okay. The Hunting
8 Regulations before us are a Summary of the Fall '88 and
9 Spring '89 Regulations issued in 1988.

10 And the Sport Fishing Regulations are a
11 Summary of the 1988 Regulations issued in 1987.

12 ---EXHIBIT NO. 363: Summary of Fall, '88 and Spring,
13 '89 Hunting Regulations issued in
1988.

14 ---EXHIBIT NO. 364: Summary of 1988 Sport Fishing
15 Regulations issued in 1987.

16 MS. SWENARCHUK: Mr. Chairman, the Sport
17 Fish Regulations are 364?

18 THE CHAIRMAN: That's correct, 364 and
19 the Hunting Regulations are 363.

20 Has everybody got those numbers?

21 (No response)

22 MR. FREIDIN: I am just wondering, is Mr.
23 Williams intending to cross Mr. McNicol and Mr. Ward on
24 these pieces of legislation or ask questions?

25 I am just wondering, if he is going to do

1 that, I just want to make sure that the Board has
2 copies of all that material.

3 MR. WILLIAMS: Yes.

4 THE CHAIRMAN: Plus the fact, I am not
5 sure they have an opportunity to review them either.
6 You may find, Mr. Williams, that the sections that you
7 are going to refer to, they may not have reviewed or be
8 aware of them..

9 MR. WILLIAMS: It is my expectation, Mr.
10 Chairman, they will be most familiar with the workings
11 of the system given that it is highly regulatory and
12 which is really an important characteristic of this
13 legislation that I will be developing, and so I am
14 confident that they will be able to deal with the
15 legislation from that aspect.

16 THE CHAIRMAN: Very well.

17 MR. WILLIAMS: Do you gentlemen have
18 copies of the regulations?

19 MS. SWENARCHUK: If I can just ask some
20 clarification as well. Mr. Williams, are these the
21 up-to-date versions of each Act as well? Do they
22 include amendments to the Fisheries Act, the Migratory
23 Birds Convention Act and the Game and Fish Act?

24 MR. WILLIAMS: Do they contain which?

25 MS. SWENARCHUK: Any amendments since

1 they were revised, the Acts?

2 MR. WILLIAMS: The statutes are, Mr.
3 Chairman, as current as shown on the face of the
4 identifying page of the document.

5 So that in answer to Ms. Swenarchuk,
6 there could have been amendments made to these
7 documents since the date shown with amendments and it
8 may be appropriate to indicate that in the
9 identification of the exhibit.

10 MR. McNICOL: Mr. Williams, I do not have
11 the copy of the Migratory Birds Convention Act here.

12 THE CHAIRMAN: Your lawyer has one.

13 MR. WILLIAMS: We will have to retrieve a
14 copy from somebody --,

15 MR. FREIDIN: The lawyer will not give up
16 his copy.

17 MR. WILLIAMS: No, no, no.

18 MR. FREIDIN: I am not going to allow
19 these witnesses to be asked questions about these Acts,
20 without me being able to follow along, I am sorry.

21 THE CHAIRMAN: I think that is a
22 reasonable request.

23 MR. FREIDIN: I assume, Mr. Chairman,
24 that if Mr. Williams is referring to a specific
25 section, that we can assume that he has ensured that it

1 is the up-to-date section, that he is not quoting
2 something that's in fact has been amended.

3 MR. WILLIAMS: Mr. Chairman, again I
4 realize the qualification of these witnesses and I do
5 not intend to cross-examine them on sections of the Act
6 that are legalistic in nature but rather practical and
7 relate to the function and purpose of the legislation.

8 THE CHAIRMAN: Do you have a copy of
9 legislation now, Mr. Freidin?

10 MR. FREIDIN: I have it.

11 THE CHAIRMAN: And do the witnesses have
12 copies of everything, at least the ones that are going
13 to be questioned?

14 MR. COSMAN: Not all counsel were
15 provided with copies. I requested at lunch my friend,
16 through his colleague, to provide us with copies so we
17 can follow the cross-examination as well.

18 THE CHAIRMAN: Very well.

19 MR. WILLIAMS: Certainly at this stage,
20 Mr. Chairman, I am just going to recite one section, or
21 preamble from each Act and I will not be getting into
22 these statutes and regulations until later when I come
23 to Mr. McNicol and Mr. Ward.

24 THE CHAIRMAN: I think, could we just
25 have an idea at this time, Mr. Williams, where you are

1 in your cross-examination and how you intend to
2 structure it?

3 Are you going to do as previous counsel
4 have down and move through the various witnesses, or
5 are you going to be examining them as a panel, or where
6 are you going in terms of your examination?

7 MR. WILLIAMS: I am going to be leaving
8 this momentarily and be coming back to it. I just want
9 to get it on record as evidence that these, in fact,
10 are part of the management tools that are used in the
11 process in that they are really the governing tools and
12 then I will be coming back to Mr. Clark to deal with
13 the professional staff and resources that are available
14 to people that use these management tools to practice
15 integrated resource management, following which I will
16 then be discussing with Mr. McNicol and Mr. Ward
17 matters that are part of their testimony and how their
18 responsibilities are governed by this legislation and
19 the regulations.

20 THE CHAIRMAN: And then where do we go
21 from there?

22 MR. WILLIAMS: Then, Mr. Chairman, I
23 think that it will demonstrate the relevancy and the
24 purpose of the legislation and that is applied being
25 not only in dealing with the resource, but the users of

1 the resource. And that I think will be of considerable
2 importance in relating to the basis on which fish and
3 wildlife management is practised.

4 THE CHAIRMAN: Do you have any estimate
5 for us at this time where you are in your
6 cross-examination in terms of overall
7 cross-examination?

8 MR. WILLIAMS: It is my expectation, Mr.
9 Chairman, that I will certainly be spending a bit of
10 time and I still have to cross-examine Mr. Kennedy with
11 regard to his testimony.

12 Certainly I think we will be on this all
13 afternoon and whether we will be able to, or whether
14 you will want to sit in the evening or go into
15 tomorrow, I just don't know at the moment.

16 THE CHAIRMAN: Well, it is the Board's
17 intention to sit fairly long hours today. We are
18 hoping - and again, we are not going to be able to
19 control this to any large extent, it depends on your
20 cross-examination, and you will be allowed whatever
21 latitude would normally be allowed to any counsel
22 cross-examining - but we are hoping that if we sit long
23 hours and perhaps into the evening, that there is a
24 possibility of concluding your cross-examination today.

25 MR. WILLIAMS: Probably, Mr. Chairman, I

1 would know better by the time we get to the
2 mid-afternoon break. I will try to assist you at that
3 time.

4 THE CHAIRMAN: Okay. Well, why don't we
5 proceed at this point until 12:30 and then it is the
6 Board's suggestion that we take an hour for lunch.

7 MR. WILLIAMS: All right.

8 THE CHAIRMAN: And come back at 1:30.

9 THE CHAIRMAN: Thank you.

10 MR. WILLIAMS: Q. Mr. Clark, I simply
11 want you to identify for me, or I would ask you to turn
12 to the Game and Fish Act, please

13 MR. CLARK: A. I am going to have to get
14 a copy here, I don't have one, I'm sorry.

15 Q. Could you tell me what the purpose of
16 this Act is and, to assist you, I will ask you to --
17 I'll direct your attention to Section III of the Act.

18 A. Shall I read it?

19 "The purpose of this Act is to provide
20 for the management perpetuation,
21 rehabilitation of wildlife resources in
22 Ontario and to establish, maintain a
23 maximum wildlife population consistent
24 with all other proper uses of lands and
25 waters."

1 Q. And could I refer you to
2 endangered -- well, the Endangered Species Act that was
3 put in evidence early, I believe, Mr. Chairman, and I
4 don't know whether you have a copy of that available at
5 the moment or not.

6 A. I don't right now.

7 MR. CAMPBELL: I can lend the witness my
8 copy.

9 THE CHAIRMAN: Well, Mr. Williams, are
10 you asking the witnesses what the purposes of
11 legislation is in cases where the legislation sets out
12 a purpose?

13 MR. WILLIAMS: Yes, I want to identify it
14 for the record, Mr. Chairman.

15 THE CHAIRMAN: Well, would it not be more
16 expeditious to identify the Act and the purpose section
17 of the Act where the Act contains a purpose section.

18 I mean, obviously witness, regardless of
19 what he thinks the purpose is, cannot change what the
20 purpose is as stated in the legislation itself.

21 MR. WILLIAMS: I understand. I am simply
22 wanting to establish a common theme here, Mr. Chairman,
23 and it takes but one reference for each Act to do that.

24 THE CHAIRMAN: Okay, proceed then.

25 MR. WILLIAMS: Q. the Endangered Species

1 Act is one that we have talked about at some length and
2 will again. Perhaps, if you could refer to the
3 preamble of the Act.

4 Would you indicate to the Board whether
5 or not, in your judgment, that that indicates the
6 purpose of that legislation?

7 MR. FREIDIN: Subject to all of the law
8 in relation to whether the preamble in the statute can
9 be looked to for the purpose, I don't know where this
10 is all going.

11 MR. WILLIAMS: Bear with me, Mr. Freidin.

12 MR. CLARK: Yes. Your question is: Does
13 that reflect the intent of the Act?

14 MR. WILLIAMS: Q. Yes, would you say
15 that?

16 A. In a general way.

17 Q. And can you tell us what that is?

18 A. Well, I will read it.

19 Q. All right.

20 A. "Consider it expedient to provide for
21 the conservation, protection,
22 restoration, propagation of species of
23 fauna and flora of the Province of
24 Ontario that are threatened with
25 distinction."

1 THE CHAIRMAN: Well, again, I do not like
2 to interrupt, Mr. Williams, but I do not think this is
3 very productive, if you are going to ask the witness
4 does such and such a section reflect the purpose of the
5 Act and the witness' response is, I will read it.

6 We can read it.

7 MR. WILLIAMS: All right.

8 THE CHAIRMAN: The Act is before us, if
9 that is what the purpose section states, that is what
10 it states.

11 MR. WILLIAMS: All right. Then I will
12 simply ask the remaining two, Mr. Chairman, whether --

13 THE CHAIRMAN: In fact, to expedite
14 things, if you would like to you can read that section
15 into the record.

16 MR. WILLIAMS: Q. With regard to the
17 Migratory Birds Convention Act, would you agree, Mr.
18 Clark, that it is formally described at the outset as
19 an Act respecting a convention between his Majesty and
20 the United States of America for the protection of
21 migratory birds in Canada and the United states?

22 MR. CLARK: A. Yes.

23 Q. And with regard to the Federal
24 Fisheries Act - I am advising you and counsel can
25 instruct you to answer this or otherwise - but I am

1 advising that it provides -- it deals with Canadian
2 fisheries waters and means all waters in the fishing
3 zones of Canada, all waters in the territorial sea of
4 Canada, and all internal waters of Canada and provides
5 that regulations can be made respecting the
6 conservation and protection and the catching, loading
7 landing, handling, transporting, possession and
8 disposal of fish.

9 Do you have any reason to disbelieve that
10 that is a feature of the legislation?

11 A. No.

12 Q. Thank you. Having said all of that,
13 what do these four acts have in common that are of
14 relevance to the operation of your district management
15 units that deliver the programs and apply the policy of
16 your Ministry?

17 A. Well, I believe the simple way to
18 answer would be to say that they provide the legal
19 framework in which the conservation and protection of
20 these resources is identified.

21 Q. Do you agree then, or is it your
22 opinion, that the one thing they all have in common is
23 that they are conservation laws?

24 A. In the general sense of the word,
25 yes.

1 Q. Thank you. Now, what is your -- and
2 I am outside the statutes, now, Mr. Chairman - but what
3 is your professional definition of fish and wildlife
4 conservation and if you feel that you are not qualified
5 to answer that question, I would put that to Mr.
6 McNicol and Mr. Ward?

7 A. Well, I think perhaps they are the
8 best people to answer it.

9 Q. Mr. McNicol?

10 MR. McNICHOL: A. My understanding of
11 the word conservation has to do with the wise use and
12 management of our fish and wildlife resources in the
13 Province of Ontario.

14 Q. Is that your view as well, Mr. Ward?

15 MR. WARD: A. Yes, it is.

16 Q. Thank you. Are these statutes, as you
17 understand them, designed to recognize and protect the
18 intrinsic value of the resource while providing limited
19 benefits to the resource user?

20 You can both answer that question, if you
21 would.

22 MR. McNICHOL: A. Could you repeat the
23 last part of your question?

24 Q. Would you or would you not agree that
25 these statutes are designed to recognize and protect

1 the intrinsic value of the resource while providing
2 limited benefits to the resource user from your
3 involvement with them, as far as applying them through
4 the regulatory process?

5 A. And you are using limited in one what
6 context there? Are you saying that they are limited --

7 Q. By virtue of the regulations
8 themselves?

9 A. Indeed, the regulations are designed
10 to ensure that wise use takes place.

11 MR. WARD: A. I agree with that.

12 MR. WILLIAMS: I will be discussing the
13 practical working arrangements of those regulations as
14 dictated by the governing statute with you after the
15 lunch hour.

16 I wanted to get those on the record at
17 this time, Mr. Chairman, and I do appreciate your
18 indulgence. I will be going back to Mr. Clark to deal
19 with other matters that are under his part of the
20 statement of evidence and you said we would be going to
21 12:30, so I can proceed into that at this time.

22 Q. Mr. Clark, are there any other tools
23 of the trade, so to spoke, or management tools now that
24 we have -- speaking in general terms, that we have not
25 addressed as to what is available to your professional

1 people to practice the greater resource management?

2 MR. CLARK: A. Well, I believe you
3 identified a list earlier on in one of your questions
4 and I said that it was more or less indicative of the
5 tools that are available and I pointed out in earlier
6 testimony that we will be dealing with the listing and
7 organization of all those tools in more detail in Panel
8 8.

9 But as I recall, your list was quite
10 complete.

11 Q. That's why I didn't go into them in
12 specifics for fear of Mr. Freidin suggesting that it
13 will be in Panel 8.

14 But I just wanted to establish the
15 principle in that certainly the statutes are the father
16 or the mother of all of the guidelines and the
17 regulations that come thereunder; is that a fair...

18 A. There is one point that I would like
19 to make in that regard. I may have expressed some
20 confusion of where you were going with that.

21 I think the point I would make is that I
22 agree with your statement that they do provide a
23 framework and I think that the tools that we use are a
24 reflection of our understanding of what that legal
25 framework is attempting to achieve.

1 So that if we develop fish guidelines, it
2 is because we want to identify those steps that need to
3 be taken to mitigate potential effects that ultimately
4 may relate to the kinds of concerns identified in those
5 Acts, for example, in the Fisheries Act.

6 Q. Well, that I guess is the concern I
7 have, Mr. Clark.

8 And, again, coming back to Mr. McNicol
9 and Mr. Ward, isn't that an assumption that has been
10 made throughout, that the Board understood all of the
11 ramifications of the programs and policies and that
12 they were in compliance with the main thrust and
13 purpose of the legislation, we have made that
14 assumption and that was taken for granted; is that not
15 so?

16 MR. WARD: A. Yes, that is correct. I
17 think in terms of my direct evidence I talked about the
18 Fisheries Act and actually I think Forests for Tomorrow
19 asked for a copy of the document that we use to train
20 our conservation officers about the habitat provisions
21 of the Fisheries Act and that I understand we are
22 getting for them.

23 So I think the Board is aware of that
24 part.

25 Q. Would it be correct to say that one

1 cannot appreciate whether the policies and programs of
2 the fish and wildlife management sector of the Ministry
3 is being properly applied unless we know that they are
4 indicative of and consistent with the purpose of the
5 legislation under which they are authorized to be
6 applied?

7 THE CHAIRMAN: Well, Mr. Williams, could
8 we just ask the panel: Is it not Ministry policy to
9 comply with existing legislation?

10 MR. WARD: Yes, that's correct.

11 MR. CLARK: Yes.

12 THE CHAIRMAN: And if there is existing
13 legislation in the area in terms of management of
14 resources such as the Migratory Birds Convention Act
15 and the Fisheries Act, et cetera, is there any
16 indication from your gentlemen's experience that the
17 Ministry's policies, in terms of management, are not
18 designed to comply with that legislation?

19 MR. CLARK: No.

20 THE CHAIRMAN: I mean, I think Mr.
21 Williams, it would be highly unusual to have a Ministry
22 indicate that the way they conduct their policies is in
23 a manner so as not to comply with existing legislation
24 in the areas.

25 MR. WILLIAMS: That is agreed, Mr.

1 Chairman, but I don't think anyone has said, since the
2 commencement of the hearings, as to what direction from
3 which they get their authority - which is the
4 legislation - which direction that goes in and whether
5 that legislation is providing for a maximization of the
6 use of the resource or whether it is providing for the
7 conservation of the resource.

8 THE CHAIRMAN: No, but I guess where I am
9 having trouble following your argument is: Unless you
10 have specific evidence that the Ministry is not
11 complying with the legislation to which you could put a
12 question or give a specific example and ask whether or
13 not this is in fact a case or not the case, there has
14 been no evidence before this hearing that the Ministry
15 is not complying necessarily with the legislation.

16 There may be, in the subsequent
17 testimony, I don't know, but I am not sure how
18 productive it is to explore whether or not the Ministry
19 is or is not complying with the legislation.

20 I mean, you can ask the panel, this
21 particular panel whether or not, in their view, they
22 are and they may give you an answer, I suspect, that
23 will be: To the best of their ability they probably
24 feel that they are.

25 You may wish, through your own witnesses

1 or by citing a specific example for which they may wish
2 to consider and then reply specifically to that example
3 whether or not they are in fact complying.

4 But to deal with it on a general basis
5 and say: Here is the legislation, it contains in some
6 instances the purposes of the legislation and are your
7 policies designed to comply with that.

8 I think if you put that question to them,
9 which I think has just been done, you will get the
10 general answer: Yes, we are complying, at least we
11 think we are.

12 You know where the Board would be
13 interested, I think, to some extent is if you can come
14 up with examples specifically as to where they are not
15 complying, because all ministries are bound by the law
16 as are most of us and if the legislation states
17 something they are expected to comply, unless the
18 legislation, of course, has a discretionary clause in
19 it which says that in certain circumstances they can
20 take a different direction.

21 But even in doing that, if a legislation
22 contains such a discretion, they are complying with the
23 statute by exercising that discretion in that fashion.

24 I guess I am just having a little trouble
25 in the focus of your questions.

1 MR. WILLIAMS: I can assure you, Mr.
2 Chairman, that I am not out to discredit the programs
3 as being in conflict with the legislation, I'm simply
4 endeavouring to get on the record something that we
5 have assumed from the outset as to what the major
6 purpose of the legislation is and then, once that has
7 been established, to see that the four acts are
8 consistent in that respect.

9 THE CHAIRMAN: Well, even they are not
10 consistent, what if they are not, as an example.

11 Even if the legislature has seen fit in
12 their ultimate wisdom to pass four pieces of
13 legislation which may not in fact be consistent with
14 each other. I mean, I put that question to you.

15 What do we do at this stage of the game?

16 MR. WILLIAMS: It is not the consistency,
17 it's to show the nature of the legislation, what its
18 purpose is and its nature as far as this being working
19 legislation which leads to the discretion of the
20 executive arm of government to apply the objectives of
21 the act in a discretionary manner and it is very
22 important, therefore, where they have -- they are in
23 power to do so, and I certainly can't raise those
24 questions with these witnesses because they are not
25 qualified to do so, but I think it is important to get

1 that into context, that they have, as working
2 legislation, the responsibility to ensure that that
3 main thrust and purpose of the legislation is applied
4 in a practical way because they have discretion to make
5 those interpretations.

6 THE CHAIRMAN: Well, I think they stated
7 in the course of their testimony that they are doing,
8 in their opinion, that. What I think it is incumbent
9 upon you, if you wish to do so and explore, is areas
10 where you feel they are not doing that and either
11 through your own testimony or by, as I say, citing a
12 specific example and indicating that, you know, you
13 have stated that in developing a management plan you do
14 such and such, would you not consider this to be
15 contrary to whatever a statutory provision might be, or
16 would you not consider this contrary to the purpose as
17 state in the legislation.

18 And you may get, you know, an answer one
19 way or another. I think we have to focus this area of
20 your cross-examination because it's been a little bit
21 amorphous.

22 MR. WILLIAMS: I thought it would be of
23 interest to the Board to know whether the conservation
24 practices as dictated by this legislation and these
25 other statutes as effective in dealing with the

1 resources, the fish and wildlife resources, as has
2 already been discussed at considerable length with
3 regard to endangered species and that this legislation
4 deals not only with one small segment of the resource,
5 but in a much broader context and I think in order to
6 put the whole issue of conservation into perspective,
7 to deal only with the one piece of legislation that
8 deals with only one very small but albeit important
9 sector of the species, doesn't give the Board the
10 benefit of an overall appreciation of the magnitude of
11 the conservation program and responsibilities of the
12 Ministry.

13 THE CHAIRMAN: With respect, Mr.
14 Williams, I don't think that's what's been done even to
15 this point in the hearing.

16 Certainly the witnesses to date haven't
17 just dealt with the Migratory Birds Convention Act. I
18 mean, we have had heard from Mr. McNicol on the moose
19 guidelines and some of the wildlife considerations that
20 are undertaken.

21 We have heard from Mr. Ward on some of
22 the aspects of the fisheries legislation and his
23 particular mandate within the Ministry, and we have
24 heard from Mr. Beechey with evidence with respect to
25 flora and fauna particularly found within the parks

1 system.

2 I mean, these are all areas that are
3 outside one specific piece of legislation.

4 MR. WILLIAMS: Yes.

5 THE CHAIRMAN: And, again, I think there
6 has been some evidence as to the practices of the
7 Ministry in terms of management of these other
8 resource, both moose, fisheries, flora, fauna and the
9 management of the park system and some of the other
10 topics we have covered to date.

11 Now, you may have some question as to
12 those management practices, you may have some questions
13 as to whether or not, in your view, they are (a)
14 complying with the legislation or not complying with
15 the legislation, or whether they are effective.

16 MR. WILLIAMS: It is the effective
17 aspect. I am not questioning whether they are in
18 compliance, I am satisfied they are; but I want to know
19 in what framework they are complying.

20 THE CHAIRMAN: Okay. Well, could that
21 not be handled by some direct questions to the
22 witnesses on some specific areas.

23 MR. WILLIAMS: And that's where I will be
24 coming to with regard to the regulations, Mr. Chairman.

25 THE CHAIRMAN: Okay. But I am just

1 having some difficulty in following the generalized
2 approach that you are taking at this stage when I think
3 the more cogent evidence to be brought before the Board
4 would be as to whether these witnesses, in the carrying
5 out of their management activities, feel that the
6 purposes of the act with respect to their particular
7 mandate are or are not effective.

8 I think you can ask them that kind of
9 question directly or a series of questions and attain
10 that kind of information based on their professional
11 opinions.

12 MR. WILLIAMS: Well, I can -- certainly
13 that question, Mr. Chairman, through you on the record
14 can be put on the record now and then I will take it
15 from there.

16 THE CHAIRMAN: I guess what we are saying
17 is: A Board can take judicial notice of a legislation.

18 MR. WILLIAMS: Right.

19 THE CHAIRMAN: Okay. We are aware from
20 this and other hearings what legislation is regulatory,
21 so to speak, in the field. We often review the
22 legislation, some pieces of legislation to a greater
23 degree than others, and we can take judicial notice of
24 the fact that the legislation is obviously before the
25 Board.

1 What we are more interested in, I think,
2 is how this legislation is being followed and perhaps
3 the opinion of these professionals as to whether or
4 not, in their view, their practices effectively carry
5 out the purposes of the legislation, but I think you
6 would be better off dealing with that specifically with
7 questions directed to the panel.

8 MR. WILLIAMS: My understanding is, Mr.
9 Chairman, the Board is interested in knowing how the
10 legislation, through regulation, is applied.

11 THE CHAIRMAN: Well, I think we have
12 heard to a large extent, quite frankly, from these
13 witnesses and others how they manage the resources and
14 what steps they take in the course of managing those
15 resources.

16 Now, you may ask them further whether or
17 not the way they manage those resources, in their view,
18 is an effective carrying out of the purposes of
19 legislation and, you know, I would suggest you put
20 those questions to the witnesses after lunch.

21 MR. WILLIAMS: Let me take this one step
22 further with you, Mr. Chairman. Would you not agree
23 with me that the legislation is really dealing with two
24 components; management of the resource and management
25 of the resource users?

1 THE CHAIRMAN: Well, what I feel and my
2 colleagues feel the legislation is dealing with is
3 going to be based upon our appreciation of the statute
4 and the evidence we hear in connection with the
5 application.

6 I am not sure I am prepared, Mr.
7 Williams, at this time to give the Board's -- or at
8 least my own as well as my colleagues' interpretation
9 of how we view the legislation.

10 MR. WILLIAMS: You see, Mr. Chairman, I
11 am having some difficulty because in earlier panels the
12 Board took great note and care to consider how
13 legislation in 1783 affects some of the resource users
14 in the area of the undertaking.

15 THE CHAIRMAN: Well, with respect, it was
16 not the Board necessarily that took great care, it was
17 the proponent's choice in terms of presenting their
18 application to fill the Board in with some background
19 information that was put on the record in terms of
20 witness panels being called to deal with the historical
21 evolution of treaties and other types of legislation,
22 constitutional legislation.

23 The Board allowed it at that time as a
24 background type of information that might make it
25 easier for the Board to understand, in the present day

1 context, of how resource management is being
2 undertaken.

3 MR. WILLIAMS: And applied to that
4 resource user.

5 THE CHAIRMAN: That's right.

6 MR. WILLIAMS: And so that gave the Board
7 a complete perspective --

8 THE CHAIRMAN: It gave the Board a
9 complete perspective, bearing in mind that the Board is
10 not going to undertake - and I it has stated its
11 position - the settlement of certain aspects connected
12 with that very legislation such as treaty rights,
13 aboriginal rights, et cetera.

14 You know, we are fairly content in our
15 own minds that that is beyond the mandate of this Board
16 in terms of trying to settle some of these questions
17 that are before the courts and before the legislature
18 of the country.

19 MR. WILLIAMS: Now, Mr. Chairman, simply
20 in the same way, in the same fashion that it was for
21 the purposes of trying to assist this Board in having a
22 broader perspective of how this Ministry deals with the
23 resources that are very much a part of the multiple use
24 approaches and concepts that are to be grappled with
25 under IRM...

1 THE CHAIRMAN: Mr. Williams, it is in a
2 very different context and the reason I say that is
3 because some of the other questions dealing with the
4 matters earlier heard by the Board are, in some senses,
5 not settled. There are differing views from a variety
6 of peoples as to what the legislation settles and what
7 it does not settle.

8 Here we are faced with some provincial
9 and, in some cases, federal statutes which, unless you
10 are going to provide evidence to the contrary, are not
11 necessarily in dispute as to their validity or their
12 ability to be enforced or the fact that they represent
13 "the law" with respect to those areas.

14 MR. WILLIAMS: I appreciate the
15 distinction and it is a very valid one, Mr. Chairman.

16 THE CHAIRMAN: I think what is important
17 in this context is what management practices does the
18 Ministry carry out, is it in compliance with the
19 legislation and, in the view of whatever expert you are
20 questioning at the time, do they feel that the purposes
21 of the legislation are being met.

22 And I do not know that you can go beyond
23 that with respect to the legislation itself.

24 MR. WILLIAMS: I think, Mr. Chairman, it
25 was simply that as in that situation, while it required

1 definition of legislation and created a much more
2 difficult situation with regard to that other
3 particular resource user, the common theme is that in a
4 different way with legislation that is not at issue as
5 to its validity and so forth, it also is a management
6 tool applied to the resource users like in no other
7 situation as it deals with this undertaking.

8 And so that there is that commonality to
9 the broad issue and, for that purpose, again thought
10 that it would assist the Board rather than hinder the
11 Board in appreciating that when they have to consider
12 two management components, not only that of the
13 resource but the user itself in socio-economic terms
14 that there is probably a balancing consideration there.

15 THE CHAIRMAN: But I think we had
16 evidence to that in this panel and certainly a number
17 of other panels. Certainly you are not going to
18 suggest at this point in the hearing that the proponent
19 does not consider some of the concerns of users?

20 MR. WILLIAMS: No, I am not, Mr.
21 Chairman, I simply...

22 THE CHAIRMAN: I mean, if you are we have
23 heard a lot of testimony, I would suggest, to the
24 contrary that has been uncontroverted at this point.

25 MR. WILLIAMS: My last comment, Mr.

1 Chairman, I hope it will put your mind at rest and that
2 that I will be provided with the indulgence of
3 referring to the legislation in an appropriate fashion,
4 by saying to you that we simply wanted to put the
5 matter in context by indicating that there is more than
6 one type of conservation legislation out there that has
7 to affect how the whole practice of wildlife -- fish
8 and wildlife management is conducted, that's all.

9 And I thought that this would help -- we
10 are going to be talking about the endangered species as
11 well, but we wanted to make it clear to the Board that
12 that's not the only component to the fish and wildlife
13 management process and that this Ministry has a lot
14 more to concern itself with than only that and it will
15 be a very important issue. And so I am trying to put
16 the conservation...

17 THE CHAIRMAN: Well, I do not know that I
18 can speak for my colleagues, but I think - at least as
19 far as I am concerned - I am satisfied that the
20 Ministry has more to concern itself with than just the
21 Migratory Birds type legislation.

22 MR. WILLIAMS: It certainly does.

23 THE CHAIRMAN: I mean, I think that has
24 been made clear, as least to me, throughout the course
25 of this hearing.

1 MR. WILLIAMS: Absolutely, but as
2 conservation documents I thought they were relevant to
3 the discussion of conservation and...

4 THE CHAIRMAN: I think there is no
5 question that some of other legislation deals with
6 conservation. I mean, if you are suggesting that it's
7 only the Migratory Birds Convention Act that deals with
8 conservation I would, with respect Mr. Williams,
9 suggest you are wrong, that is not what the other
10 legislation says.

11 MR. WILLIAMS: That's right. And if I am
12 given the opportunity in questioning Mr. Ward and Mr.
13 McNicol on that after lunch, that's exactly the point I
14 want to make.

15 THE CHAIRMAN: Okay. Well, let's break
16 for lunch at this point and then afterwards I would ask
17 that you seriously consider directing specific
18 questions dealing with conservation issues, if you so
19 wish, that are somewhat focused so that we are dealing
20 with something that, within the realms of his
21 experience, he can answer forthrightly, in some cases,
22 yes or no; in other cases, with an explanation.

23 MR. WILLIAMS: Let me just ask you one
24 question, Mr. Chairman, for purposes of direction.

25 Is the Board interested or not in hearing

1 how the Ministry best applies the conservation
2 principles, not only for the benefit of the resource,
3 but for the resource user?

4 THE CHAIRMAN: Well, I think we have
5 heard some of that to date. I think it is contained in
6 some of the witness statements and some of the filed
7 evidence.

8 Yes, we are interested in seeing how the
9 Ministry applies its principles of management and
10 whether they concern conservation or preservation or
11 any other principle, we are interested in knowing how
12 does the Ministry both manage, or in the case of this
13 planning process before us, propose to manage the
14 resources. But those are sort of factual questions
15 that can be asked, specifically focused.

16 MR. WILLIAMS: We will try to work within
17 that framework after lunch. Thanks, Mr. Chairman.

18 THE CHAIRMAN: We will break until a
19 quarter after one. Thank you.

20 MS. SWENARCHUK: And hour or...

21 THE CHAIRMAN: Oh, sorry, a quarter after
22 two. I have almost a quarter to one. A quarter to
23 two, not a quarter after. One hour.

24 ---Luncheon recess taken at 12:45 p.m.

25

1 ---Upon resuming at 1:45 p.m.

2 THE CHAIRMAN: Thank you, ladies and
3 gentlemen. Please be seated.

4 Mr. Williams?

5 MR. WILLIAMS: Thank you.

6 Q. Mr. Clark, page 2, paragraph 5,
7 statement of evidence, page 65. You have stated in
8 evidence, Mr. Clark, that the district offices have
9 staff working in each of the Ministry programs which
10 you identify as being forest resources, provincial
11 parks, fish and wildlife, lands and waters, fire and
12 administration.

13 You also state that the staff are field
14 oriented and are familiar with the resources,
15 industries, issues and people in their district.

16 I think that statement also emphasizes
17 what you have advised us through earlier evidence, is
18 where the strengths of the district operation, that is
19 your field orientation.

20 I refer you now to page 83, the last
21 paragraph thereon:

22 "Because district staff are directly
23 involved in program delivery, they are
24 in direct contact with district resources
25 and stakeholders on a regular basis and

1 as a result they develop a good working
2 knowledge of their district."

3 Now, with that in mind, I would refer you
4 to what I understand you have already available to you
5 as an exhibit. It was attached as a response to our
6 Interrogatory No. 1.

7 And the fact sheet I want to refer you to
8 is the one entitled: Classified and Unclassified
9 Positions and Tenure Current Encumbent for Selected
10 Positions in Districts in the Area of the Undertaking.

11 THE CHAIRMAN: What exhibit number?

12 MR. WILLIAMS: That was part of the
13 response documentation to our interrogatory, Mr.
14 Chairman, Question 1, and I was asked whether I needed
15 to file that as an exhibit and I was advised that you
16 already had that in your material and it wasn't
17 necessary to do so.

18 MRS. KOVEN: Is that an exhibit from this
19 panel, Mr. Williams?

20 MR. FREIDIN: I don't believe we filed
21 it. If it was indicated that we filed it along with
22 ours, we only filed the one from your client and that
23 was No. 3 about surveys of lakes and streams.

24 MR. WILLIAMS: No, no. Subsequently has
25 been filed and Ms. Blastorah told me that this document

1 was with the Board and the witness panel and we didn't
2 need to produce the copies and that everybody -- all of
3 the parties had copies of this document.

4 THE CHAIRMAN: Okay. Is it in the form
5 of a question?

6 MR. WILLIAMS: No, I wanted to -- I had
7 to refer to information in that document to which
8 questions will relate, yes.

9 THE CHAIRMAN: I am sorry, we do not --

10 MR. WILLIAMS: I understand your problem,
11 Mr. Chairman. We were prepared to furnish it and I had
12 specifically asked the Ministry to make enough copies
13 that would be available, because it was an off size
14 sheet, to make enough copies available and I was
15 assured that all of the parties had a copy of this
16 document. That is why I didn't do it, so I think it
17 is...

18 THE CHAIRMAN: Well, regardless of what
19 happened historically, the fact of the matter is that
20 we do not have it in front of us at the moment.

21 MR. WILLIAMS: And there was another set
22 of documents there as well which were position
23 descriptions and job classifications with the Ministry.

24 Again, we were advised that all of that
25 documentation had been made available to the parties

1 when they responded to our interrogatory.

2 THE CHAIRMAN: All right. Could I
3 suggest the following: Could you just move on to a
4 different question and when -- is Ms. Blastorah due in
5 shortly?

6 MR. FREIDIN: Yes.

7 MR. CHAIRMAN: When she comes back she
8 might be able to explain what your understanding was
9 and we will deal with that question subsequently.

10 MR. WILLIAMS: Okay. All right, then,
11 Mr. Chairman, we will come back to that, if you can
12 give me just a moment.

13 Q. Mr. Kennedy --

14 THE CHAIRMAN: Just before you start, Ms.
15 Blastorah is just about on her way in, perhaps we could
16 clear that up right now.

17 MRS. KOVEN: That hasn't been entered as
18 an exhibit yet.

19 MR. FREIDIN: The other parties perhaps
20 have it because it is an answer to the interrogatory.

21 THE CHAIRMAN: Ms. Blastorah, we are
22 having a little dialogue here as to a particular set of
23 documents that Mr. Williams believes was filed and yet
24 we do not seem to have a record of them.

25 Could you explain what their status is?

1 MS. BLASTORAH: Mr. Chairman, I checked
2 on that with the person in our office who was
3 responsible for sending out that material, and I was
4 advised by her that everyone did receive a copy of that
5 fold-out chart with the answer to the interrogatory.

6 THE CHAIRMAN: Well, it may have gone to
7 the parties, the problem is is that the Board does not
8 accept it as evidence--

9 MS. BLASTORAH: Right.

10 THE CHAIRMAN: --until we formally
11 exhibited it in order to give parties an opportunity --

12 MS. BLASTORAH: No, it had not been
13 marked. I had understood that Mr. Williams was going
14 to do that. Is that the concern?

15 MR. WILLIAMS: Mr. Chairman, that is why
16 I had talked to their staff people to ask them because
17 of the off size of the document if they could assist us
18 by providing us with copies of it, so I could submit it
19 as an exhibit in cross-examination, and that's when I
20 was advised that this had all been done.

21 THE CHAIRMAN: Okay. Do you have one
22 copy available that could be exhibited right now?

23 MS. BLASTORAH: I am afraid I missed the
24 first part of this, Mr. Chairman. Is it just the
25 fold-out chart that we are talking about?

1 MR. WILLIAMS: No, and then it was also
2 the job descriptions which were missing some critical
3 information on them and I had asked that the original
4 copies be reproduced, also for filing as an exhibit.

5 MS. BLASTORAH: Okay. The job
6 description, I don't believe we have extra copies right
7 now, I could arrange for that down the hall. I did
8 give Mr. Williams two extra copies of the fold-out
9 chart and I have one myself that I can make available
10 for the use of the Board.

11 So perhaps if we could start with that
12 and I will arrange for copies of the other material
13 right away for the Board. I think one copy probably is
14 in the reading room.

15 THE CHAIRMAN: Okay. Why don't we do
16 this, in order to keep your cross-examination in its
17 context, why don't you give the Board one copy now, we
18 will mark it as an exhibit and the Board will utilize
19 that copy for the purposes of this examination.

20 I believe the witness panel have copies,
21 do they not, or at least one copy that the witness
22 answering can refer to?

23 MR. WILLIAMS: We can get our extra copy
24 if you give us a few moments, Mr. Chairman, it is
25 upstairs.

1 THE CHAIRMAN: Well, I think Ms.
2 Blastorah is going to go and see what she can do. If
3 we can just have one copy for the Board, that is fine.
4 MR. WILLIAMS: While that is being done,
5 Mr. Chairman, I also want to file...
6 MS. BLASTORAH: (handed)
7 THE CHAIRMAN: All right, Mr. Williams.
8 We are going to admit this package, including Question
9 No. 1 of your interrogatories which contains the answer
10 and this other material, as the next exhibit.
11 MR. WILLIAMS: All right. I also have
12 one further document that you might want to include
13 with that exhibit.
14 THE CHAIRMAN: What is that?
15 MR. WILLIAMS: It is a Section 1
16 entitled: Section 1 Expenditures, the Ministry of
17 Natural Resources Estimates 1987-88, extracts
18 therefrom, two or three pages.
19 THE CHAIRMAN: Is that part of this?
20 MR. WILLIAMS: No.
21 THE CHAIRMAN: Okay.
22 MR. WILLIAMS: (handed)
23 MR. FREIDIN: You should mark those as
24 separate exhibits, Mr. Chairman, I believe.
25 THE CHAIRMAN: This last document?

1- MR. FREIDIN: This last one was not part
2 of the answer to the interrogatory.

3 THE CHAIRMAN: Okay. So the package with
4 Question No. 1 will be Exhibit 359, I believe.

5 MS. SWENARCHUK: 65.

6 MR. CAMPBELL: 365.

7 THE CHAIRMAN: Oh, I am sorry, I missed a
8 whole series. Sorry, Exhibit 365.

9 ---EXHIBIT NO. 365: Interrogatory Question No. 1 and
10 answer from OFAH together with
11 fold-chart entitled: Classified
12 and Unclassified Positions in
13 Tenure Current Encumbent for
Selected Positions in Districts in
the Area of the Undertaking, plus
a series of job descriptions.

14 THE CHAIRMAN: And this other document
15 just submitted will be Exhibit 366.

16 ---EXHIBIT NO. 366: Extracts from document entitled:
17 Section 1 Expenditures, MNR
Estimates 87-88.

18 MS. SWENARCHUK: Mr. Chairman, could you
19 just tell us briefly what is appended to the
20 interrogatory and what is the other documentation?

21 THE CHAIRMAN: Okay. We have the
22 interrogatory itself plus the answer which starts on
23 page 2 of that, plus a document entitled: Classified
24 and Unclassified Positions of Tenure Current Encumbent
25 for Selected Positions in Districts in the Area of the

1 Undertaking, plus a series of job descriptions for
2 various portions.

3 Now, do you want me to have to go through
4 each of those?

5 MS. SWENARCHUK: No, thank you.

6 THE CHAIRMAN: And that makes up one
7 Exhibit, 365, and then 366 is that additional document
8 just handed out.

9 Very well, Mr. Williams.

10 MR. WILLIAMS: Q. Mr. Clark, in looking
11 at the classified and unclassified position document of
12 the tenure of staff, I would direct your attention to
13 the column unit forester and to the column fish and --
14 sorry, fish management officer and wildlife management
15 officer, those two columns.

16 With regard to unit foresters as to
17 current position, can you explain to the Board the
18 reason why there appears to be a full complement of
19 staff for each of the districts with regard to a unit
20 forester, while this is lacking with regard to the
21 other positions I have identified?

22 MR. CLARK: A. If you don't mind, I
23 would just like a minute to look at this record.

24 Q. Yes, yes.

25 A. I am not familiar with the staffing

1 situation in the individual districts and so I can't
2 really speak to or rationalize the organizational
3 structure that they have. So I am not really in a
4 position to speak to the whole issue as to, for
5 example, why in Algonquin Park they have the unit
6 forester but don't have a fisheries management officer.

7 MR. PYZER: A. I might be able to help a
8 little bit there in terms of Kenora District as one
9 example. One of the charts -- or one list here that
10 isn't mentioned is the conservation enforcement
11 co-ordinator and certainly in Kenora District --

12 Q. Is that the one and the same as the
13 conservation officer or...?

14 A. No, it is his supervisor.

15 Q. I see, all right.

16 A. And that is not shown on this chart.

17 Q. Right.

18 A. And in Kenora District, as one
19 example, our conservation officer/co-ordinator is also
20 the fish management officer. In some other districts
21 that one person could also be the -- on this sheet
22 here, the wildlife management officer. So there are
23 certain positions within the organization that are not
24 shown on this chart at all.

25 Q. Mr. Pyzer, with regard to your

1 comment that in a number of instances the fish
2 management officer is also the wildlife management
3 officer, could you --

4 A. I am sorry, the conservation
5 officer/co-ordinator could also double as either a fish
6 and/or wildlife officer, management officer.

7 Q. Oh. Does that not also happen with
8 regard to the fish management officer and the wildlife
9 management officer, that there is a doubling up of
10 responsibilities?

11 A. To be honest, I don't know the answer
12 to that question. I don't know if there are any fish
13 and wildlife management officers combined, but I do
14 know --

15 Q. Perhaps that chart will assist you
16 and perhaps you could explain to me why in nine -- not
17 less than nine districts, the position of wildlife
18 management officer has been combined with the fish
19 management officer position?

20 That represents, I think, about 33 per
21 cent of the districts within the area of the
22 undertaking.

23 A. No, I can only assume that in terms
24 of the requirement or the need in that particular
25 district, that one person can fulfill that dual

1 function.

2 Q. All right. Well, can we move away
3 from making assumptions and is there someone on the
4 panel who can answer that question with certainty?

5 MR. CLARK: A. Mr. Williams, I think the
6 problem here is that you are asking for a
7 generalization about very specific situations and, as I
8 pointed out, I am not the district manager of Algonquin
9 Park, I don't know what the staffing and workload
10 requirements of that district are and, therefore, I am
11 not in a position to give you a clear and explicit
12 explanation as to why the structure of the organization
13 is the way it is.

14 I think the point I would make is that by
15 and large the organization of each district, as I
16 pointed in my evidence, is a reflection of the workload
17 and the priorities that they place in that district.
18 And, in some instances, where perhaps the feeling is
19 that the priority in that district is that the
20 positions of -- or the responsibilities to be
21 undertaken by a fisheries management officer and a
22 wildlife management officer can be shared in one
23 position and that, obviously, is not uncommon in
24 certain areas where the workload requirements are such
25 that that is all that is required.

1 I think the problem here is, it is very
2 hard for us to go beyond this without having the
3 knowledge of the specific district and what its
4 requirements are.

5 Q. I would refer you to the job or
6 position specification information that has been filed
7 with regard to wildlife management officer and a fish
8 management officer and you, having been a district
9 manager, perhaps you can advise us whether personally
10 you in your office had a doubling up exercise with one
11 person trying to do two jobs or not?

12 And, in any event, can you show to the
13 Board where all of the job descriptions and duties and
14 obligations of a wildlife management officer match
15 those of a fish management officer that would justify
16 one person taking on all of those duties and
17 responsibilities that are normally a function of two
18 separate individual specialists?

19 A. I think in those instances, where a
20 job represented combined responsibilities of a
21 fisheries management officer and a wildlife management
22 officer, the normal process would involve writing a new
23 job spec that would basically assign responsibility to
24 those functions and, in a manner consistent with the
25 job specs, he or you would see an allocation of time in

1 terms of the percentage of time to be spent on those
2 two functions.

3 Q. Is there any -- I couldn't find any
4 information in your flow charts and in your job
5 organizational charts that indicated there was a
6 doubling up of those technical/professional duties as a
7 matter of course?

8 A. Well, it is not uncommon in certain
9 districts. An example would be in many districts where
10 you have perhaps a not too big provincial parks program
11 and a wildlife program, we have sometimes created the
12 position of an outdoor recreation co-ordinator or
13 supervisor in the district and that person would have
14 responsibility for both programs and would have staff
15 working under them that had the background required to
16 do that job.

17 Q. Do you believe that that could
18 explain such a large incidence of doubling up as
19 evidenced by the statistical information before you;
20 that is, 33 per cent of the districts had a doubling up
21 situation?

22 A. It may be one reason.

23 Q. Are there -- can you think of any
24 other reason that would pertain to what we were
25 discussing earlier this morning?

1 MR. WARD: A. Another reason I can think
2 of, Mr. Williams, is that I know Algonquin Park, for
3 example, has a fisheries assessment unit there and they
4 will be staffed with some fisheries biologists.

5 So in terms of the district manager in
6 Algonquin Park, if he wants some fisheries advice he
7 would probably go to his fisheries assessment unit
8 biologist - and I don't think these are recorded here
9 because I noticed on the Kenora one we have two
10 fisheries biologists assigned to the Lake of the Woods
11 assessment unit and they aren't listed on these tables
12 as well.

13 So that may be one of the reasons why you
14 may not have a fish management officer in the district,
15 they are relying upon the expertise of the fisheries
16 assessment units.

17 Q. Is that the exception or the rule?

18 MR. WARD: A. Well, I gave you two
19 examples in Algonquin Park and I guess even in Kenora.
20 I think there may be some exceptions. I know we have
21 got, I think, 16 assessment units across the province,
22 so there may be 16 districts affected that way.

23 Q. Mr. Clark, if you can take a look at
24 exhibit --

25 MR. WILLIAMS: I am sorry which one was

1 the budget exhibit, Mr. Chairman?

2 THE CHAIRMAN: 366.

3 MR. WILLIAMS: 366.

4 MR. FREIDIN: Mr. Chairman, I just would
5 like to make it clear: If the Board hasn't had the
6 opportunity to read the question that was asked, but
7 the selection or the identification of the positions
8 which is on the fold-out were the choices or the
9 positions indicated by Mr. Williams.

10 MRS. KOVEN: Yes, but Mr. Freidin if we
11 are going to be sensible about this, why wouldn't you
12 put down that the fisheries assessment units are also
13 located in these areas?

14 Certainly, there has got be an overlap of
15 the same kind of work, unless we can explain that the
16 fisheries management officer does an entirely different
17 kind of work than a fisheries assessment unit, and he
18 does.

19 Well, maybe we better find out what that
20 is.

21 MR. WILLIAMS: Q. Perhaps, Mr. Ward, you
22 could take us to those two documents that are filed,
23 the job description classifications for the fish
24 management officer and wildlife management officer to
25 see whether in fact they are sufficiently similar to

1 justify that type of doubling up under certain
2 circumstances?

3 MR. MARTEL: Could I ask a question too,
4 because it relates to this and I am not sure how it
5 straightens out. I think someone said that you could
6 take certain positions and double them up and that was
7 supervisory.

8 What role or what position does a
9 wildlife officer have or a fish management officer; are
10 they supervision or are they part of OPSEU which then
11 doesn't make it quite as easy to combine the two.
12 Because I think that is what Mrs. Koven is coming at
13 from a different direction, that there has got to be an
14 explanation of how you can do it.

15 I don't think it is simply a case of
16 being able to double up, unless they are not members of
17 of OPSEU, because you would have to have a separate
18 collective agreement then or a contractual arrangement
19 which allow you to do that; would you not, as opposed
20 to a supervisory capacity which is excluded from OPSEU,
21 as I understand it. I could be wrong.

22 MR. PYZER: Yes. I am certainly no
23 expert in administration either, but I don't believe
24 that you will find that they are classified as fish and
25 wildlife officers or fish management officers. Usually

1 a resource technician, resource technician 1, resource
2 technician 2, 3, et cetera, or an RTS 1 an RTS 2, a
3 senior technician 1, 2, 3 and it is not easy to
4 classify.

5 You, in fact, can have a combined
6 position which would be the same classification, if you
7 will, because of the amount of work in a particular
8 district which would be equal to a fish management
9 officer singularly in some other district.

10 But I think the point that Mr. Freidin
11 was trying to make, and it certainly is really
12 applicable to a Kenora District where, again, one of
13 the key positions not shown here is the conservation
14 officer, the enforcement co-ordinator.

15 And I certainly know in many cases in the
16 province that person functions as either the wildlife
17 management officer or the fisheries management officer
18 depending on what the priorities are within the
19 district. I know that is really confusing.

20 MRS. KOVEN: And that is not a
21 conservation officer?

22 MR. PYZER: No, that is not a
23 conservation officer, that is his supervisor and that
24 is not shown here at all.

25 And the other point that Mr. Ward was

1 making is that we also have what are called assessment
2 units, fisheries assessment units, and we happen to
3 have one in Kenora and that assessment unit has several
4 fisheries technicians and two biologists and I don't
5 believe any of those people are reported in here
6 either, and we use them extensively for any fisheries
7 management issue, as an example, on the Lake of the
8 Woods.

9 MRS. KOVEN: So that pre-empts your need
10 to have a fisheries management officer in Kenora?

11 MR. PYZER: Pardon me?

12 MRS. KOVEN: If you have one of those
13 assessment units in your district, then you don't need
14 to have a fisheries management officer.

15 MR. PYZER: No, we still have a fisheries
16 management officer. In fact, if you look at Kenora, it
17 shows one biologist and, in fact, we have three
18 biologists counting the assessment unit and if you were
19 to look at fish and wildlife technicians, here it shows
20 1-2. We also have a number of fisheries technicians
21 that are associated with the fish assessment unit and I
22 don't believe they have been reported in here either.

23 And I think Mr. Freidin's point was there
24 was a question asked saying how many biologists in
25 terms -- and I guess you would have to go back to the

1 original question.

2 I guess what I am saying is: I don't
3 feel very comfortable looking at this chart and saying
4 that that accurately reflects my district in terms of
5 fish and wildlife personnel. I think it is about 60
6 per cent representative.

7 MR. FREIDIN: Mr. Chairman, if I could
8 just indicate it took 15 days of staff time to prepare
9 this information.

10 MR. WILLIAMS: Q. Mr. Clark, looking at
11 Figure 4, page 85, does the classified and unclassified
12 position chart before you reflect the presentation of
13 the type of organizational structure that exists,
14 certainly as it did in your Wawa District, without
15 being selective as to positions on either the timber or
16 non-timber side of the operation?

17 MR. CLARK: A. That diagram reflects, I
18 believe, the current organizational structure of Wawa
19 District.

20 Q. A number of other positions have been
21 referred to here that would - I guess it is being
22 implied - would perhaps modify or change the
23 circumstances, but are any of those other named
24 positions on the chart that was relied on to develop
25 this classification position chart?

1 A. I am not sure what you are saying,
2 Mr. Williams.

3 Q. I believe Mr. Pyzer referred to
4 another position and I believe Mr. Ward mentioned
5 another position, and I don't believe those positions
6 are on the chart.

7 MR. WARD: A. The fish and wildlife
8 management technician seal, is that the seal coding
9 here?

10 Q. We can only rely on the information
11 that's been provided.

12 MR. PYZER: A. No. Looking at Wawa's
13 chart here, I don't believe that they have a
14 conservation enforcement co-ordinator, conservation
15 officer/enforcement co-ordinator. It looks from that
16 chart like the wildlife management officer doubles as
17 that function.

18 MR. CLARK: A. That's correct. In Wawa
19 District, and I think it is the example that Mr. Pyzer
20 gave, there is a shared responsibility. The person who
21 was the wildlife management officer is also the
22 enforcement co-ordinator.

23 Q. But those other positions that have
24 been referred to which suggest we have selectively not
25 used them were not mentioned in your flow chart; is

1 that correct?

2 A. Well, these are just the positions
3 that are in Wawa District.

4 Q. Which is what we were using for
5 guidance to pick out the key personnel. I think there
6 was an inference that we were trying to be selective to
7 serve our purpose in the selection of personnel.

8 THE CHAIRMAN: Now, Mr. Williams, if I
9 understand what the document shows, the document shows
10 what is the existing situation in the particular
11 districts requested -- where information was requested
12 for particular districts, the number of employees or
13 positions currently employed in those districts.

14 It does not necessarily cover positions
15 which are, in effect, a doubling up when those
16 positions were not requested. I take it when you
17 prepared the chart you looked at the list of
18 positions--

19 MR. CLARK: That's correct, yes.

20 THE CHAIRMAN: --that were requested and
21 only answered on the chart relevant to those positions,
22 but there may be other positions employed in the
23 various districts which are not in that list and,
24 therefore, are not reflected on the chart?

25 MR. WILLIAMS: What I am wanting the

1 Board to understand is the positions that we selected
2 were based on positions that were used in this example
3 chart that was the Wawa District one and that we
4 weren't being selective for any other reason, we were
5 simply only picking out positions that were known to
6 us.

7 THE CHAIRMAN: But that may not reflect
8 the position in other districts.

9 MR. CLARK: Well, that's right.

10 MR. WILLIAMS: That's true.

11 THE CHAIRMAN: So you really do not get
12 the total picture unless you have a chart with respect
13 to each and every district and you had a chart that
14 outlined every position connected with each and every
15 district. That would give a full picture.

16 MR. WILLIAMS: Yes.

17 THE CHAIRMAN: But that information was
18 neither requested nor prepared at this point in time.

19 MR. WILLIAMS: That's correct.

20 Q. Where had we left off. I don't know
21 if you had had an opportunity to answer the question,
22 Mr. Clark. We pursued the documentation and had some
23 additional comment from your...

24 MR. CLARK: A. Well, no, I think the
25 summary that was made was the correct one.

1 We provided the answer here to your
2 request, it doesn't include all positions. To really
3 understand the situation in each district, you have to
4 have an organization chart for that district and I
5 think that's the point I have been making.

6 We can talk in general terms about why
7 one district has or hasn't got either a fisheries
8 management officer or wildlife manager or why, in some
9 cases, they are grouped together. But without knowing
10 the specifics of that particular district and its
11 workload and the priorities that it sets, it is very
12 hard to be very specific about why that decision was
13 made.

14 And I am not trying to avoid the answer.
15 I think that in a number of cases we have provided you
16 with examples of situations where a decision was made
17 and how it was dealt with. And Mr. Pyzer notes that,
18 for example, in his district he has access to people in
19 the fisheries assessment unit and that's a
20 consideration he might make in making a determination
21 as to what the total number of staff he would need in a
22 particular area of the program.

23 I am not sure -- well, I can't really say
24 much more beyond that.

25 THE CHAIRMAN: Mr. Clark, I think a more

1 interesting question for the Board would be: Within
2 the experience of you gentlemen on this panel in the
3 districts that you had experience with, are there
4 staffing requirements that remain unfulfilled to the
5 extent that you feel the districts are impaired from
6 being able to carry out their mandate, regardless of
7 what the positions are called, and regardless of
8 whether or not there is a doubling up with a particular
9 position?

10 MR. CLARK: Speaking from my own
11 experience in my particular district, I would say there
12 wasn't.

13 THE CHAIRMAN: Mr. Pyzer, what about your
14 district?

15 MR. PYZER: You know, it is such a
16 difficult question to answer. We do the absolute best
17 job that we can, and I think we do an extremely good
18 job.

19 If I had another one or two or three
20 people in the fish and wildlife field, I believe I
21 could do another eight or nine or one thousand per cent
22 better job. But I believe we are doing an extremely
23 good job today. I would never say that I couldn't use
24 more, I could.

25 THE CHAIRMAN: Do any of you gentlemen

1 know any districts where there is a recognized
2 impairment of ability to carry out your mandate because
3 of lack of appropriate staff?

4 MR. WARD: I think, Mr. Chairman, if you
5 would have asked me that a few years ago in the
6 northwest region I would have said yes.

7 In the last year, you can look at that
8 chart in terms of the number of positions that are,
9 like, relatively new positions that have been created.
10 Like, we got five new fisheries biologists in the
11 northwest region within the last year with the resident
12 angling licence funds. And that, from my viewpoint,
13 has certainly enhanced the delivery of the fisheries
14 management program in the northwest region.

15 In terms of -- not just in terms of
16 timber management, just in fisheries management
17 generally, there are, as has been identified, four more
18 fisheries assessment units for the northwest region.
19 They are not in place. The only one that is existing
20 right now is Lake of the Woods assessment unit.

21 If those four were in place, I know we
22 would be doing a better job of fish management in the
23 northwest region with that kind of science.

24 MR. WILLIAMS: Q. Is cashflow part of
25 the problem of not having those assessment...

1 MR. WARD: A. I don't know whether it is
2 cashflow or where it is because I am not involved with
3 allocating funds to different programs. But I am just
4 saying from a fisheries -- delivery of a fisheries
5 program in the northwest region, as a regional
6 fisheries biologist I have that perspective.

7 In the past -- when I first went up to
8 the northwest in Kenora, our fisheries program really
9 ran on the backs of our fisheries management officers.
10 They are our senior technicians, they are fellows in
11 most cases who had 20, 25, 30 years' of experience.
12 They are fellows that when I came into that region I
13 gained a lot of knowledge from based on their
14 experience.

15 But some of our -- now that we have added
16 fisheries biologists to the positions, some of their
17 jobs are changing now. I think it is generally in
18 society that we are adding more professionals to
19 resource management in whatever organization.

20 People are getting better educated, the
21 public are better educated, the people that I am
22 dealing with are coming in with a better knowledge
23 about resources and they are more particular on
24 questions about resources and they are expecting more
25 of a professional, scientific type of answer in terms

1 of, you know, dealing with government and resource
2 issues.

3 I think you can see it even in the
4 popular magazines that have been written on fishing,
5 for example, The Fisherman that comes out of the United
6 States, they have biologists writing in that magazine,
7 putting a lot of sort of scientific messages in the
8 popular literature about fish genetics and so on.

9 So we are seeing our angling clientele,
10 our stakeholders becoming better educated and more
11 knowledgeable about it, and I think that's reflected in
12 the government. And I know in our Ministry realizing
13 that: Hey, we need to get more professional people in
14 here to provide that level of service for the public.
15 So it is an evolutionary change type of thing.

16 MR. MARTEL: I think you said four
17 fisheries management units have been approved?

18 MR. WARD: In my evidence, in terms of
19 what I gave, I indicated the fisheries -- the
20 designation of assessment units across the province. I
21 believe I said there were 27 that had been identified
22 in our SPOF working group No. 1, and I believe there
23 are 16 operating now.

24 And of those that aren't operating, there
25 are four to be placed in the northwestern region.

1 MR. MARTEL: Have they received
2 approval, though; do you know, or is it --

3 MR. WARD: No, I don't believe they have.
4 I think this is just -- in the fisheries management or
5 strategy that's been developed in the province, that's
6 where they have been identified.

7 THE CHAIRMAN: Ms. Swenarchuk, you had a
8 comment.

9 MS. SWENARCHUK: I just wondered if you
10 could clarify the question that you put with regard to
11 whether there are staffing deficiencies in areas, or
12 were you referring in that question only to fish and
13 wildlife responsibilities or other responsibilities as
14 well?

15 THE CHAIRMAN: No, I was intending it to
16 be broader than that, Ms. Swenarchuk. I felt that
17 since we have the expertise of two -- one former
18 district manager and one existing district manager,
19 that at least with respect to their particular
20 districts they might be able to advise whether or not,
21 in their opinion, their present staff in all areas
22 adequately allows them to carry out their perceived
23 mandate or whether it is a problem. And they both
24 indicated with respect to their own districts.

25 Then I went further and asked them

1 whether or not they knew of any other districts where
2 this might be a problem in general and --

3 MS. SWENARCHUK: Presumably they were
4 answering not only for fish and wildlife, but for the
5 whole range of positions?

6 THE CHAIRMAN: I am not sure whether or
7 not they...

8 MR. CLARK: I would want to condition my
9 response by saying, in the context of current Ministry
10 practice, I would stand by my comment about staffing
11 levels.

12 I am not playing games here. It is a
13 very tricky business to know what needs to be done by
14 whom. And I use the word current Ministry practice
15 because, given the way we currently do business, the
16 kinds of data we collect, the way we use them, I would
17 say that in my particular district at the time,
18 although I would never boast to being totally satisfied
19 with my staff, I would say that we had the basic
20 requirements we needed to do the job.

21 Having said that, I think all
22 organizations have to be mindful of changing societal
23 values, changing technologies and research and a host
24 of things like that can influence the way we may
25 ultimately deliver our product. And so that I am not

1 suggesting that this is a static thing, it is something
2 that's constantly changing and I think we have to
3 evaluate all the time.

4 But in my particular district at the
5 time, given the way we were delivering that product, I
6 would say we were in reasonably good shape.

7 MRS. KOVEN: I don't think that is
8 exactly answering Mr. Williams' question, which I
9 think -- what he is trying to get at is the fact that
10 when you look at these statistics it would appear that
11 the timber staffing side is certainly much larger than
12 the non-timber side, and he is using this phrase
13 doubling up.

14 It seems that people who are involved in
15 the timber resources side have specific jobs assigned
16 to an individual; whereas on the wildlife and fisheries
17 side, they seem to be given a secondary treatment
18 because they are required to take on more than one
19 responsibility.

20 MR. PYZER: I think some of the
21 differences there, and they really are organizational
22 and, as Mr. Clark said earlier, you have to look at it
23 on a district-by-district basis because in many
24 situations our conservation officers will do, in fact,
25 fisheries management officer work. So in some of those

1 districts where you see a combined position, some cases
2 the conservation officer is doing it.

3 And I am not trying to avoid the question
4 either. It really is so difficult to look at right
5 across the province and look at two numbers and add two
6 numbers together and say one is larger or one is
7 smaller.

8 As an example - and I don't know this, I
9 am trying to count off the top of my head - but I
10 believe that in Kenora District, as an example, our
11 forestry program is actually smaller than our fish and
12 wildlife program. However, if offered more staff, I
13 don't believe I would put them into the forestry
14 program.

15 So although fish and wildlife is as large
16 as or, if not, larger than the forestry program today,
17 given additional staff, I think I would still put them
18 in and still say that there is the requirement, if I
19 were given them, to put them into the fish and wildlife
20 program.

21 In terms of all our programs, and not to
22 get totally blase about it, I look at it -- ever since
23 I was about eight years old I have wanted to work for
24 the Ministry of Natural Resources and every person, by
25 and large within the Ministry, has done that.

1 And it is hard to think about -- when I
2 look at resource management problems in my district, as
3 an example, it is hard for me to be objective in
4 comparing that with another 25 beds in the Kenora
5 Hospital or an addition to the public school. From my
6 perspective, I would much rather have that money
7 flowing to the Ministry of Natural Resources.

8 I don't that broad perspective that
9 obviously some people smarter and brighter than I do in
10 terms of government. My objective -- or how I look at
11 Kenora District, is we are an extremely lean mean
12 fighting machine and I sure wouldn't want to get any
13 leaner.

14 MRS. KOVEN: I think for those of us who
15 have never wanted to work for the Ministry of Natural
16 Resources, when we look at the situation --

17 THE CHAIRMAN: Speak for yourself.

18 MRS. KOVEN: --the situation, the way I
19 see it, is historically the forest sector, the timber
20 management side was just so predominant historically
21 that you weren't able to balance the scales against
22 that predominance until recent years.

23 MR. CLARK: I think there is a couple of
24 things you have to be very careful with here, and I
25 think we all go through this process of wondering about

1 the numbers and wondering about relative value and work
2 that needs to be done and how that reflects the
3 importance of programs, which I think is in the
4 priority that the Ministry attaches to them.

5 There is a couple of points that I would
6 make and something that I was really mindful of when I
7 was a district manager. We don't vote in the district
8 on the basis of numbers, and I think this is very, very
9 important to understand.

10 As a district manager, I had to hear
11 evidence from my fish and wildlife people as to their
12 requirements, as to the values they were concerned
13 about, and I also had to hear, if you want, from my
14 timber people, and I had to pass a judgment, and one of
15 the things I didn't do was count up the number of
16 people making the input.

17 What I did do was listen to what they had
18 to say and the value of their evidence with respect to
19 a particular problem we are dealing with.

20 The second point I want to make very
21 clearly is we, for organizational purposes, make
22 distinctions between forest resources, fish, wildlife,
23 but the other point I keep making - and it is not just
24 something we say for the sake of saying - is we are an
25 IRM organization, we don't function as separate

1 entities.

2 And a timber technician is one of those
3 many positions that you find in a district. He may be
4 doing something like compliance monitoring, cut
5 inspections and a whole host of other things that in
6 fact relate very, very closely to the objectives that
7 we are looking at in terms of our fish and wildlife
8 program.

9 The other final point I would make is
10 that, once again, the numbers reflect the amount of
11 basic dog work that has to be done in each of those
12 services and there is a hell of a lot in timber and, as
13 a result of that, that's reflected in the fact that you
14 tend to have quite a few technicians who are out there
15 doing operational surveys, involved in a whole host of
16 activities that involve the collection of that basic
17 data that is essential to good timber management
18 planning, whether it is serving the objectives of
19 timber management or wildlife. And I think this is
20 very important to understand.

21 It is a bit of a mistake to get caught up
22 in the assumption that because one group of positions
23 is under fish and wildlife that's where the emphasis is
24 or isn't.

25 MR. WILLIAMS: Can you -- sorry, you are

1 still answering the question. I am sorry I interrupted
2 your answer to Mrs. Koven.

3 MR. CLARK: No, I think...

4 MR. WILLIAMS: Q. Are you saying, Mr.
5 Mr. Clark, that the various duties and responsibilities
6 of a staff person in the fish and wildlife sector are
7 less demanding and less varied than those with regard
8 to those of a timber technician?

9 MR. CLARK: A. Not in the least.

10 Q. I thought I had understood from your
11 comments where you say that a timber technician - which
12 is the one you took as an example - had many other
13 duties to perform and it wasn't a simple task of
14 addressing simply the straight timber management things
15 but had other duties and responsibilities under his job
16 duties and classification.

17 Is this not much more so the case with
18 regard to wildlife management officers or fish
19 management officers?

20 A. No. I think the point I was making
21 is that in doing his job as a timber technician, the
22 benefits that accrue from him doing or her doing that
23 job well are of value not only to the timber program,
24 but to the fish and wildlife program and to the lands
25 program.

1 Q. Does it work the other way as well?

2 A. Absolutely.

3 Q. Mr. Pyzer, you had said that things
4 have been getting leaner and meaner, looking at the
5 figures and the number of employees on the two sides of
6 the ledger. Did you mean to say getting leaner and
7 meaner with regard to those in the forest and wildlife
8 side of the operation?

9 MR. PYZER: A. I don't believe I said we
10 are getting leaner. I said I thought we were lean and
11 I wouldn't want to get any leaner.

12 THE CHAIRMAN: And you were also mean.

13 MR. PYZER: That's right.

14 MR. WILLIAMS: Q. Everything is
15 relative. Is it equally lean on both sides of the
16 management operation? I don't see that in the figures
17 before me.

18 MR. PYZER: A. Again, I would say yes, I
19 think it really is. I would not want to try and have
20 to manage with fewer staff than I have got today and I
21 can certainly make extremely good use of more staff. I
22 believe that we are doing the job that we are supposed
23 to be doing and we are doing it very well.

24 When I gave my evidence I talked about
25 the fact that having done performance appraisal, I have

1 stocked a large number of staff in our district, and I
2 make no bones about that, who are working long hours on
3 Saturdays and Sundays and who are taking work home with
4 them at night.

5 A lot of that is because they love to do
6 their job, but it is also a reflection of the workload
7 on the Ministry and our workload in terms of what Mr.
8 Clark and Mr. Ward talked about, the problems -- people
9 are bringing us more and more issues. I don't say they
10 are smarter than they used to be, but they certainly
11 keep us on our toes and the job is a long demanding one
12 and it seems, for whatever reason, to be getting longer
13 and more demanding. I think this Environmental
14 Assessment is a reflection of that.

15 So I think we are lean, but I didn't mean
16 to say that we are getting staff cutbacks and those
17 sorts of things. I think it is in relation to the
18 environment within which we are working.

19 MR. MARTEL: Can you tell me, let's say
20 in the last five years, what type of increase there has
21 been in the wildlife management and the fish management
22 section?

23 I am not asking for a dead-on figure, but
24 my impression is that it has increased compared to
25 where we were, let's say, three or four years ago,

1 that in fact -- guarded, I think most of you are
2 saying: Look, we don't have enough staff and we do the
3 job the best we can with what we have got, but, boy, if
4 we had a chance we would take some more on.

5 So starting from that position, how far
6 have we come in trying to ensure the other values that
7 we want to protect in the forest and in the streams and
8 the lakes and whatnot?

9 MR. PYZER: I think in terms of MNR staff
10 and where we have come - this is the wrong
11 terminology - but we are probably our own worst
12 enemies. We want to do so much. I think we do know
13 what the possibilities and the potentials are because
14 of everything that you've heard in the last couple of
15 days.

16 We would love to do more and more 24
17 hours -- they are not enough hours in the day to do it
18 and we will never, ever in terms of resource
19 management, good timber management, good fish
20 management, good wildlife management, everything that
21 we have been talking about, we will never, ever, ever
22 have enough time, staff, dollars to do the job that the
23 people in the Ministry of Natural Resources want.

24 THE CHAIRMAN: No, but Mr. Pyzer, I think
25 Mr. Martel's question was directed in the last four or

1 five years, there is a perception that there has been
2 some increase in the staffing on the wildlife side.

3 MR. PYZER: Yes, there has.

4 THE CHAIRMAN: And does the Ministry
5 regard the progress made in this area, in terms of
6 increased staff being made available, sufficient, is it
7 deficient, is it keeping up with the workload, or are
8 there some major problems?

9 And if there are some major problems in
10 not having enough staff, could you identify what the
11 source of those problems are? Are they entirely, for
12 example, budgetary, you just don't have the funds to
13 hire whom you need, or is it a factor of not being able
14 to get the right people with the right qualifications?

15 You know, there is a variety of reasons
16 why you may not be at levels that you think you should
17 be at. I think what the Board would like to know is:
18 Are you at levels compared to four or five years ago
19 that you deem to be sufficient?

20 MR. PYZER: As Mr. Ward and Mr. McNicol
21 explained, I think we are at a higher level in terms of
22 staffing than we were at before.

23 THE CHAIRMAN: Is it a satisfactory
24 curve, as far as you are concerned?

25 MR. PYZER: I would say yes.

1 THE CHAIRMAN: How about you, Mr. Clark?

2 MR. CLARK: I would just like to think
3 about this for just a minute.

4 Yes. I would say, yes.

5 THE CHAIRMAN: Anybody else have any
6 different...

7 MR. WARD: I just want to say something
8 is terms of fisheries, and we can go back a little bit
9 further than five years, say in the last ten years, we
10 have had sort of two major funding initiatives in
11 fisheries.

12 We had the strategic plan for Ontario's
13 fisheries which I believe was approved by Cabinet and
14 resulted in increased funding for fisheries management
15 in the Ministry of Natural Resources which resulted in
16 establishment of several more assessment units across
17 the province that resulted in creating a new -- the
18 position that I am presently in in Kenora, the regional
19 fisheries biologist.

20 They only had four in the province at
21 that time. In 1980 there was a creation of four more.
22 I don't know how many more staff came in 1980, and then
23 within the last few years we have had the resident
24 angling licence with an infusion of about \$10-million
25 into the fish management budget and that resulted in

1 creation of more fisheries biologist positions.

2 And I indicated in the northwest region
3 we ended up, I believe, getting four or five new
4 positions from that program. So in terms of fisheries,
5 it has been increasing.

6 In terms of your question, Mr. Chairman,
7 about whether there is enough qualified people out
8 there, I think when you have expansion sort of every
9 five years, the universities are putting out lots of
10 graduates. A lot of the people that we have hired
11 recently have been on contract work with us, some up to
12 ten years before they got on permanent staff.

13 So in terms of -- there is a lot of
14 expertise, you know, graduate biologists that are out
15 there that are gaining work experience on contract with
16 us. Sometimes these contracts are 11-month positions,
17 and so we do have quite a bit of talent out there
18 that's available for hiring.

19 MR. McNICOL: I would like to make a
20 comment with regard to Thunder Bay District with regard
21 to Mr. Martel's question and the Chairman's point a
22 little while back about impairment of program delivery.

23 In Thunder Bay District we have a
24 position for wildlife biologist and also for a
25 fisheries biologist. The fisheries biologist's

1 position had been vacant for four years and
2 concommitment with that vacancy came the directive for
3 the development of a District Fisheries Management
4 Plan.

5 Fortunately, we had a contract fisheries
6 biologist on staff at that time that had, as Mr. Ward
7 has explained, a good deal of experience in the
8 district for six years and he carried the bulk of the
9 workload in terms of producing that District Fisheries
10 Management Plan. But he also had to have input from
11 the fish and wildlife supervisor who had a fisheries
12 background and even myself, even though my background
13 is wildlife, in terms of the production of that plan.

14 So in terms of the production of that
15 product, a product that should have been produced by a
16 salaried person in that position, it didn't appear on
17 my program because it took time away from what I was
18 supposed to be doing, it took time away from what the
19 fish and wildlife supervisor was supposed to be doing.
20 So the situation has improved, we now have a fisheries
21 biologist, but there has been a time when...

22 THE CHAIRMAN: Some of these problems are
23 obviously related to lack of permanent salary dollars
24 because you are making up some of these positions by
25 way of contract positions; would that not be correct?

1 MR. WARD: Correct.

2 MR. WILLIAMS: Q. Do you have any
3 indication, percentage-wise, how many would be offset
4 or handled by contract positions versus staff? I have
5 to assume that all of these are regular staff and not
6 contract positions on this chart.

7 MRS. KOVEN: Doesn't the "V" show an
8 unclassified contract and if you add them up there are
9 15, 20, 30.

10 MR. WILLIAMS: I am sorry, yes, yes.

11 THE CHAIRMAN: Mr. Beechey, we don't want
12 to leave out the park side of things. Do you have
13 anything to add on the parks side?

14 MR. BEECHEY: I was going to interject,
15 if I may. If I can just speak very briefly to the
16 parks stream that is indicated here on page 85 on
17 Figure 4 and just say something about staffing and the
18 functions that sort of go on at the district level.

19 I think this diagram shows pretty
20 typically the structure of the parks program at a
21 district level in MNR, and typically we do have
22 something tagged as a park supervisor on occasion that
23 may be doubled up with wildlife supervisor.

24 At each park level, operating park there
25 is certainly a park superintendent and depending on the

1 size of the park that may be a full-time, sort of an
2 annual position, or the individual may work in the park
3 prior to, during and shortly after the operating season
4 and then be pulled into the district and carry on with
5 some other park duties. As well, oftentimes there is a
6 parks technician or technical support staff.

7 This staffing has been developed primarily
8 with respect to delivery of the parks program over the
9 years. A lot of the specialist's planning and
10 management functions that my evidence relates to has
11 sort of been centrally delivered through main office
12 and through specialist contract staff working in
13 consultation, close supervision with the regional level
14 in the organization, regional park co-ordinator and a
15 regional parks planner, along with some support staff.

16 I guess we are finding ourselves in a
17 position now with respect to the new area of natural
18 and scientific interest initiative of finding that
19 there is a specialist function there that - to use
20 Gord's term, he is running lean in Kenora -
21 particularly from a program point of view, from a parks
22 program point of view in terms of delivering this new
23 initiative, we are running very lean.

24 In southern Ontario, we responded in part
25 to that need by creating what we call a regional

1 ecologist position and we have one of those individuals
2 in each of our three southern Ontario regions at the
3 present time; southwestern, central and eastern region.

4 And eastern region, I indicated the other
5 day, does include a small portion of the area of the
6 area of the undertaking and we are finding that these
7 individuals are indispensable to providing that linkage
8 specialist function that typically has been top down
9 from a system planning point of view up until this
10 point providing that sort of continuity and specialist
11 linkage from region to district.

12 And I certainly do see a need in the
13 longer term of working toward that level of
14 specialization at a regional level throughout northern
15 Ontario as well.

16 The individuals in the position has
17 certainly proven itself in terms of program delivery in
18 terms of continuity, in terms of staff specialization,
19 it has proven indispensable in the south and I know
20 that the case would be the same for the north as well.

21 At the present time, we try and deliver
22 that function to some extent by working, as Mr. Clark
23 has already indicated, by providing sort of a
24 specialist function, if you will, directly from main
25 office dealing with our regions, but day-to-day

1 situations arise and, as best we can -- dealing with
2 district personnel and it might be a district manager,
3 it might be a parks supervisor, it could be any other
4 supervisor that might be involved as a member of the
5 planning team, for example, working on an area of
6 natural and scientific interest.

7 So we have been trying to provide that
8 function. I think we have done as good a job as we can
9 in doing that in terms of providing that specialty from
10 main office, but I think increasingly we are going to
11 have to get a little more effective, at least at a
12 regional level.

13 I can see certain efficiencies for sure
14 in terms of centralizing this to a regional level and
15 having specialists there that then can relate to
16 district staff; be they bioloigists, fish and wildlife
17 supervisors, park supervisors whatever.

18 Q. Mr. Clark, I want to refer you to
19 four totals on that chart and then to Exhibit 366.
20 Please look at it and bear in mind when we go to
21 Exhibit 366: Unit foresters total 76, senior timber
22 technicians total 71, fish management officers 25,
23 wildlife management officers 22.

24 Is there any correlation between that
25 disparity of staff strength, numerically in any event,

1 with the figures shown on page 33 of Exhibit 366 which
2 is an extract from your Ministry's estimates for
3 1987-88, whereby we have a total budgetary allocation
4 for fisheries management and wildlife management
5 combined of \$58.5-million and on page 40 we have, in
6 the forest management program, a total budgetary figure
7 of \$195.75-million?

8 MR. CLARK: A. You are asking: Is there
9 a correlation, in a general way, between the levels of
10 staffing and the budgets for those programs?

11 Q. Yes.

12 A. I would say obviously, yes.

13 Q. Given those set of circumstances, can
14 one not conclude that one has to be disadvantaged over
15 the other--

16 A. I think --

17 Q. --in levels of performance and
18 delivery of service?

19 A. Well, not without looking
20 specifically at program objectives and looking
21 specifically at the work that needs to be done.

22 Q. Would...

23 A. I know that is a very general answer,
24 but if I may just expand a little bit.

25 The funding, to some extent, is a

1 reflection of what the legislature appropriates to the
2 Ministry and within that context we then have to, as I
3 pointed out earlier, go through a work program planning
4 exercise where we identify the work that needs to be
5 done and what we can actually do within the funds that
6 are made available to us.

7 And some important linkages exist here.
8 Work program planning, as you may recall, was - I
9 hesitate to say at the bottom - but in terms of the
10 hierarchy of planning functions that we get involved in
11 in the Ministry is that level at which we make specific
12 decisions about the amounts of funds we will allocate
13 to do the specific work that relates to the various
14 programs that we deal with and, to some extent -- to a
15 very significant extent, the targets for those programs
16 are established through planning.

17 And, in other words, the work that needs
18 to be done is identified through the planning process,
19 whether it be doubling the moose herd in Thunder Bay
20 District by the year 2,000 or whatever, and the work
21 associated with achieving that particular objective
22 then has to be reviewed in the context of work program
23 planning.

24 And in terms -- and also in the context
25 of, as I say, the funds that are made available for

1 that purpose by the legislature. No money comes
2 without strings being attached to it.

3 Q. Are you or are you not saying that
4 notwithstanding a clear disproportionate level of staff
5 and financial resources, that we can be assured that
6 there is equal opportunity for delivery of service in
7 the two different sectors, timber and non-timber
8 management operations?

9 Is that what you are telling us?

10 A. I think the way that you can -- at
11 least in the context of the subject of this particular
12 undertaking - I mean this is another tough question -
13 the way that I think you have to look at whether or not
14 you think the job is being done adequately, for
15 example, in the context of this particular undertaking,
16 is through the timber management planning process,
17 because that is the vehicle that we use at the district
18 level and at the management unit level for arraying the
19 various values that we think are important and should
20 be given consideration.

21 And, you know, I think what I am saying
22 is that for anyone who has a particular stake or
23 interest in a particular aspect of resource management,
24 whether it be wildlife management, the protection of
25 recreational opportunities, or the enhancement of

1 those, you have to look at that in the context of this
2 particular exercise in terms of the results of the
3 timber management planning process, not strictly in
4 terms of how much money we happen to spend in district
5 "x".

6 In other words, I am saying the results
7 are probably the most important consideration rather
8 than necessarily getting hung up on the amount of money
9 that we are allocating.

10 Q. Well, the opportunity -- or are you
11 in a position to advise: Will the opportunity be
12 provided in Panel 15 to further scrutinize the
13 financial and staffing strengths in relation to the
14 timber management planning process, because you said at
15 the outset of your question that you have to look at it
16 in the context of the timber management planning
17 process, as I understood your answer?

18 A. Well, I am saying ends are -- I guess
19 really what I am saying is the proof is in the pudding.
20 I think our concern here is whether or not we do good
21 resource management and, to use the vernacular earlier
22 today, wise use of resources?

23 And what I am saying is: It is one thing
24 to look at the amount of money we spend on this thing,
25 but perhaps the most important thing is to look at the

1 results of the exercise that we go through in timber
2 management planning and use that as the basis for
3 determining whether or not we are successful or not.

4 Q. Mr. Clark, let me take you to the
5 other aspect of the concerns that are expressed in my
6 opening questions to you, page 86.

7 Again, if I can bring you back to page
8 86, the bottom paragraph:

9 "The maintenance of a high degree of
10 professional and/or technical competence,
11 on-the-job experience particularly in the
12 local area, and a strong field
13 orientation provide a good foundation for
14 the collection and evaluation of
15 background data for use at the management
16 unit level."

17 THE CHAIRMAN: Did you get that,
18 Reporter?

19 THE REPORTER: No, I didn't. If you
20 could just give me the reference...

21 MR. WILLIAMS: I am quoting from --

22 THE CHAIRMAN: It is the last paragraph
23 of page 86.

24 MR. WILLIAMS: The last paragraph on page
25 86. Bullet 3.4, the last paragraph on that page, it is

1 part of Mr. Clark's evidence.

2 Q. And in relation to that, I refer you
3 to the position specification and class allocation
4 document that you now have for a fisheries management
5 officer.

6 Could you turn to that, please?

7 MR. CLARK: A. Is that...

8 Mr. Williams, one thing. I don't know if
9 I am making myself clear. Earlier on I spoke to the
10 whole business of -- you know, I know you are probing
11 very carefully about the relative amounts of money that
12 are spent on the wildlife or fisheries program as
13 opposed to timber management.

14 The one point I want to make, and I am
15 trying to get at this business that you can't simply
16 weigh them and say, therefore, one is more important
17 than the other.

18 And this is a theme that we are going to
19 come through over and over and over again I think, when
20 we get further on in our evidence, that timber
21 management is a very, very expensive business. It
22 costs a lot of money to build roads, it costs a great
23 deal of money to do site preparation, it costs a great
24 deal of money to put in costly culverts and bridges to
25 protect other values, it costs a great deal of money to

1 undertake forest protection activities and that is one
2 of the realities of this particular business.

3 It doesn't necessarily cost a lot of
4 money, at least in terms of the wildlife program, to
5 leave a reserve around a bald eagle's nest or to do a
6 reconnaissance survey of a particular lake in order to
7 verify something that you have done.

8 Now, I am not trying to suggest,
9 therefore, that one is less important. I think I am
10 talking about the reality of the management activities
11 that we are involved in in timber management, and I
12 think that this message will come out loud and clear as
13 we move through the activities; harvest, renewal and
14 maintenance.

15 You know, I would say this stuff involves
16 big bucks. It is not a reflection of the fact that,
17 therefore, it is more important, it just happens that
18 to do these kinds of things costs a lot of money and
19 that is reflected in the amount of money in relative
20 terms that has been allocated to that particular
21 program.

22 And a lot of those dollars that are
23 spent - and this is where I don't want to go too far
24 here - create very positive benefits on the wildlife
25 side. Roads, for example, provide access to forest

1 resources, they provide the opportunity for us to
2 manage the forest, they also provide significant
3 numbers of opportunities for people to either view
4 wildlife or hunt wildlife.

5 And, once again, I guess I am trying to
6 deal with this, I think the tendency to want to
7 oversimplify the situation by implying that because the
8 money is in timber management, benefits are only felt
9 in timber management. I don't think that is the case.

10 Certainly part of the reason is just
11 simply the costs associated with doing the various
12 timber management activities we are involved in, but I
13 think it is also important to understand that those
14 dollars that are spent in that program have a great
15 many positive benefits that extend far beyond a narrow
16 interpretation of timber management. And I am not sure
17 I have said it that way before, and I think it is very
18 important to understand that.

19 Q. Wouldn't the task of people in the
20 areas of concern to Mr. Ward and Mr. McNicol be eased
21 and the quality of service improved if the selective
22 fish and wildlife population counts and habitat studies
23 and surveys were able to be doubled from the number
24 that are presently being done because of the type of
25 constraints we are talking about that seem to be more a

1 burden on the shoulders of the people in that area than
2 on the people in the timber management sector?

3 MR. CLARK: A. I am wondering if maybe
4 we should let John -- or Mr. McNicol and Mr. Ward
5 answer that.

6 MR. WARD: A. In terms of fisheries, I
7 would certainly like to see more inventory dollars.
8 But just because I would increase my knowledge of the
9 fisheries resources in the northwest region, I don't
10 think increasing my inventory program would make for
11 more effective input into timber management planning
12 because actually, I think there is a bigger incentive
13 for the companies and the foresters for us to do more
14 inventory, because if you don't have the information
15 based on the fisheries policy that I presented in my
16 evidence, you cannot have the wood.

17 Basically you have to know what the
18 slopes are of the shorelines, you have to know where
19 the critical habitats are located, and basically the
20 more information we have the more we can fine tune our
21 management and we, in some cases, free up more wood
22 when we do that.

23 So in terms of, if we are just talking
24 strictly input into timber management plans, I don't
25 think having more inventory dollars is going to make it

1 any more effective, I guess. In other words, I think
2 the industry themselves would probably like to see more
3 inventory information so that more wood could be freed
4 up.

5 So we do have the process in place with
6 our guidelines and policy to protect fish habitat and,
7 if we don't have the information, we have sort of a
8 continuous reserve around our shorelines.

9 MR. McNICOL: A. From a wildlife
10 standpoint --

11 Q. I am just wondering if I might just
12 before -- Mr. Ward, let me show to you a letter.
13 (handled).

14 THE CHAIRMAN: This will be Exhibit 367.
15 ---EXHIBIT NO. 367: Letter under the signature of Mr.
16 Ward.

17 MR. WILLIAMS: Q. Is that letter under
18 your signature, Mr. Ward?

19 MR. WARD: A. That's correct.

20 Q. And could I address -- direct your
21 attention to paragraph 2.

22 A. On the first page?

23 Q. On the first page, the last--

24 A. Right.

25 Q. --sentence therein. Could you advise

1 the Board what your professional opinion was at the
2 time that you wrote that letter?

3 A. Well, in 1983, if this hearing was
4 held in 1983 I would have the same opinion as I
5 indicated in that paragraph, that our aquatic habitat
6 inventory program couldn't keep up with the present
7 road building and timber harvesting activity occurring
8 in northwestern Ontario.

9 Partly because of that situation, the
10 Ministry has developed the Fish Habitat Guidelines in
11 that process, and also developed policy that is in
12 place now that says that we need the information before
13 we can cut.

14 And I think it is that kind of concern
15 that I have expressed in that paragraph at that time,
16 which I had also expressed internally in the Ministry
17 of Natural Resources - not only to people in my region,
18 but also to the fisheries policy committee and anybody
19 that would listen to me, including the Assistant Deputy
20 Minister of northern Ontario - that I think that we
21 have developed these guidelines and this policy because
22 of the concern I expressed here and the concern that
23 was shared by other fisheries managers in northern
24 Ontario.

25 Q. But if you are clearly stating that

1 you are not in a position to keep pace with what is
2 happening in the timber management --

3 MR. FREIDIN: That is in 1983.

4 THE CHAIRMAN: That is in 1983. I am
5 sorry, Mr. Freidin.

6 MR. FREIDIN: I mean, put the question to
7 the witness, but put it to him fairly, Mr. Williams.

8 MR. WILLIAMS: Mr. Freidin, you are too
9 quick to respond.

10 Q. You are saying the situation has
11 changed Mr. Ward?

12 MR. WARD: A. Yes, I am, yes.

13 MRS. KOVEN: I thought you meant that the
14 situation hasn't changed in terms of the inventory not
15 able to keep up with road building and timber
16 harvesting, but in fact the Fish Habitat Guidelines
17 protect the fish until you can do the inventory.

18 MR. WARD: That's correct, yes.

19 The inventory program, I haven't got
20 figures in terms of the amount of money that has gone
21 into it in the last ten years. I indicated in my
22 evidence we are averaging about 350 lakes per year and
23 certainly, you know, our inventory is expanding.

24 But with the policy and the guidelines in
25 place, we can protect that fish habitat, even if we

1 don't have inventory information on it.

2 MR. WILLIAMS: Q. I will be coming back
3 to this document later in evidence, Mr. Ward. I am
4 sorry, Mr. McNicol, you were going to give your
5 response.

6 MR. McNICOL: A. Thank you, I was. In
7 terms of habitat inventory for wildlife, in Thunder Bay
8 District and across most of the northern districts in
9 the area of the undertaking, we have had directed
10 funding for the purpose of habitat inventory which is
11 new in our program.

12 If I can use Thunder Bay District as an
13 example, two years ago we got funding at the level of
14 \$50,000, about half in B salary and half in what we
15 call other funds, which we used to rent aircrafts and
16 such to enable us specifically to look at areas of
17 proposed harvest.

18 Now, this was new, we had never had that
19 kind of funding, directed funding for that purpose in
20 the past. So I would concur with Mr. Ward that, with
21 regard to the inventory, we are well ahead of where we
22 were just two years ago.

23 MR. WILLIAMS: Mr. Chairman, I just have
24 about one, maybe two questions on this particular theme
25 and I will be moving on to others and then perhaps it

1 would be an appropriate time to break.

2 THE CHAIRMAN: Okay.

3 MR. WILLIAMS: Q. Mr. Clark, I was
4 directing your attention to the position specification
5 and class allocation form that is filed with you in
6 relation to -- to relate that to your pronouncement in
7 your evidence that there is a strong field orientation
8 effort that is the strength and backbone of your people
9 in the fish and wildlife management area.

10 Could you, in looking at this particular
11 specification --

12 MR. CLARK: A. Excuse me, which one is
13 that?

14 Q. This is for a fisheries management
15 officer -- I am sorry, take the wildlife management
16 officer would you, please.

17 The wildlife management officer; do you
18 have that? Do you have that form?

19 A. Yes, I do.

20 Q. All right. The last page, to lend
21 support to your argument, it says that the working
22 conditions would be such that 40 per cent of the time
23 of this officer would be in-house, if I can use that
24 term, and 60 per cent out in the field.

25 But in looking at the percentage of time

1 assigned to the different duties and related tasks in
2 detail, can you show us where that balance can be
3 demonstrated rather than the reverse?

4 THE CHAIRMAN: Could I ask, Mr. Williams,
5 what relevance the time spent in the office on the job
6 or the time in the field has to the ability of the
7 officer to perform his overall management or
8 supervisory functions?

9 MR. WILLIAMS: Well, the evidence I have
10 heard, Mr. Chairman, is that it is of some considerable
11 import to the effectiveness of the district management
12 operations to provide quality delivery of service, that
13 there is a lot of field orientation and involvement
14 dealing with the customers they are serving, so to
15 speak, out there in the field and --

16 THE CHAIRMAN: Don't you have to look at
17 the overall picture; don't you have to look at the
18 overall performance of the officer and his ability to
19 perform his duties?

20 MR. WILLIAMS: Yes, you do.

21 THE CHAIRMAN: Whether some of those are
22 performed in the office, in terms of drawing up plans
23 or documentation, as opposed to being in the field,
24 don't you really have to weigh it on the overall
25 performance?

1 MR. WILLIAMS: And this is the only
2 evidence I can put my hands on, Mr. Chairman, that
3 would provide that type of information because it does
4 indicate where the concentration of their duties appear
5 to be and I think by looking at the other job
6 description that it would give an even better
7 indication.

8 And so I felt that that was important to
9 establish as to whether in fact there is that higher
10 degree of field orientation work going on and service
11 to the customer, because given --

12 Q. If I might, by way of a question, a
13 supplementary, Mr. Clark: Given that it has been
14 expressed from time to time, and I have to say it is a
15 generality, but you hear it expressed from time to time
16 and I ask you: Have you heard it expressed from time
17 to time that there is not adequate staff to provide the
18 field delivery services necessary to get the job done?

19 MR. CLARK: A. I am not -- just what do
20 you mean by field delivery?

21 Q. In dealing with the customer on a
22 hands-on basis such as Mr. Pyzer so eloquently
23 established in evidence when he was first giving
24 testimony as to the strength of the organization by
25 being in the field and knowing the people and working

1 with them and being out there on a one-on-one basis,
2 and in public meetings and things of that nature and
3 being -- in other words, instead of in-house,
4 contrasted to--

5 A. You are suggesting that given that --

6 Q. --field service.

7 A. My sense is you are saying, given the
8 number of responsibilities this person has on the
9 spec--

10 Q. Yes.

11 A. --that would suggest that he or she
12 might be desk bound?

13 Q. Correct.

14 A. Okay. A common complaint of all
15 staff in the Ministry of Natural Resources from main
16 office right down, everyone believes they should be in
17 the field more and I am sure this person does as well.

18 One of the things that we are facing as
19 an organization is that we are being -- I think as a
20 result of the increased emphasis being placed on
21 accountability, that we are having to, both in a
22 monetary sense and in terms of the various interest
23 groups whom we interact with, we are faced with more
24 detailed planning processes, more intricate systems of
25 public consultation, more detailed accounting

1 procedures and record-keeping.

2 Much of what we talked about earlier with
3 respect to keeping track of who we talk to, what their
4 concerns were and so on, relates to the fact that when
5 you look at a job spec like this, it is obviously heavy
6 to desk work, and this is certainly a problem in the
7 Ministry that we are having to cope with at the
8 district level generally.

9 The job spec, I haven't looked at this
10 one in detail. I can tell you the way we deal with
11 this kind of a situation in the field organization was
12 primarily through performance appraisal. Certainly, as
13 a one-time manager, when I looked at a job spec I tried
14 to get a sense of what that job was all about and where
15 the emphasis should be. And, of course, that varied
16 from perhaps season to season and month to month and I
17 interpreted that and I interpreted it with the employee
18 through the performance management cycle where I sat
19 down and set goals and objectives for the person.

20 And certainly one of the problems that we
21 deal with on a regular basis at the field level is the
22 fact that some of our staff aren't getting out enough
23 and I think one of the things that I did as a manager
24 quite consciously was to try, through that management
25 cycle, to set clear objectives, or my supervisors did

1 as well, for their staff in terms of how they were
2 going to make time available to themselves to look
3 after both functions, but to ensure that they maintain
4 that strong field orientation which I talked about --
5 which we both talked about in great detail. I am not
6 sure I am...

7 Q. That is precisely the concern.

8 A. What you raise is the persistent
9 concern that we have, you know, for the reasons that I
10 identified, and I think the way we deal with it is
11 through supervision of staff and performance appraisal.

12 MR. MARTEL: But isn't that why a lot of
13 them go back on Saturdays and Sundays, in fact. I am
14 not sure it is so much the level of the job, but if
15 they are going to get out into the field they have to
16 be there Saturday to finish filling in all the papers?

17 MR. WILLIAMS: Mr. Martel, I think you
18 are contradicting Mr. Pyzer, he assured you it is a
19 level job.

20 MR. MARTEL: I certainly am, but it is
21 the real world maybe.

22 MR. CLARK: It could be in some cases.

23 THE CHAIRMAN: All right, ladies and
24 gentlemen, we will break for 15 minutes. At this point
25 in time, Mr. Williams, whereabouts are we in your

1 examination?

2 MR. WILLIAMS: I think, Mr. Chairman, we
3 are going to be a little while yet.

4 THE CHAIRMAN: I didn't anticipate that
5 we were not, but I wondered where, in terms of what --

6 MR. WILLIAMS: Yes, time-wise. I think
7 we are a good half way through.

8 THE CHAIRMAN: Okay. We shall press on.

9 ---Recess taken at 3:25 p.m.

10 ---Upon resuming at 3:57 p.m.

11 THE CHAIRMAN: Thank you, ladies and
12 gentlemen. Please be seated.

13 MR. WILLIAMS: Mr. Chairman, I am aware
14 of your desires, as expressed early this morning, of
15 trying to sit longer and move things faster.

16 We have been going since nine o'clock
17 this morning. I have a couple of questions that I had
18 meant to put to Mr. Clark and Kennedy that I still have
19 to put, and then I have a few questions for Mr. Kennedy
20 which should have us finished by five o'clock.

21 I would ask the indulgence of the Board,
22 that all factors considered, in the long run I think we
23 could expedite the process if we could perhaps adjourn
24 at that time and give us the opportunity to perhaps
25 streamline some of the material that we have scheduled

1 for the balance of our presentation and go at it
2 tomorrow so we would be assured of being finished.

3 THE CHAIRMAN: Well, Mr. Williams, the
4 Board has discussed the process and it is our view that
5 we would like to continue with the cross-examination
6 sitting late today until we finish it.

7 And part of the reasoning behind that is
8 the fact that we have to look at the overall process.
9 We are all going to be here many months within this
10 location and other locations, we have lost some time
11 this week - albeit it was not certainly at your
12 instance, in terms of other parties finishing earlier
13 than anticipated - and I think at some stage of the
14 game there has to be an example set by the Board of the
15 degree to which we are committed towards making sure
16 that this hearing progresses at a proper and
17 appropriate speed.

18 And in this regard, we have to sit here,
19 we have to sit here through the whole of the hearing,
20 obviously. All of you parties do not necessarily have
21 to do that, since you may be only interested in certain
22 parts of the evidence. We have large reading
23 commitments in terms of the material being filed and
24 the documentation that we have to go through, and we
25 are dedicated towards making a super human effort to

1 see that this hearing progresses at what we consider to
2 be on appropriate speed.

3 And notwithstanding that we might
4 otherwise normally indulge counsel, from time to time,
5 in terms of finishing at a convenient time and
6 following a pace that may otherwise be accommodated in
7 a hearing that is going to ultimately take much less
8 time than one like this, it is our view that we would
9 like to press on and we are willing to have a couple of
10 breaks as we go along, but we want to do everything in
11 our power to finish this cross-examination, if
12 possible, today and we are willing to sit into the
13 evening to do so.

14 MR. WILLIAMS: Mr. Chairman, I appreciate
15 what you are saying. It was my understanding that the
16 hearings for this week were scheduled to go from Monday
17 through Thursday.

18 THE CHAIRMAN: Yes, they were scheduled
19 to go from Monday through Thursday, but when we see the
20 amount of evidence that has been adduced in a
21 particular week and if it turns out in that particular
22 week that less evidence-in-chief went in than otherwise
23 scheduled, based on the estimates of various counsel,
24 and we feel that there is an appropriate time available
25 for cross-examination on a particular panel, we are

1 prepared to sit until you are prepared to canvass the
2 issues that you wish to canvass.

3 If we finish earlier than otherwise
4 scheduled on Thursday, we finish earlier. Believe me,
5 there are other things that the Board, in connection
6 with this hearing, has to do and we are not going to
7 just come here and fill out days just because they have
8 been previously scheduled.

9 We are going to I think - and this is for
10 the advice of all counsel in the future - I think you
11 are going see us, first of all, attempting to tighten
12 up the process whenever we can, probably sit in many
13 instances longer hours in an attempt to get this
14 hearing back on the rails. I am not saying it is
15 totally off the rails, but certainly into a management
16 of the hearing that expedites the oral presentation of
17 evidence.

18 MR. WILLIAMS: Well, Mr. Chairman, I
19 don't think that the request that I am making is
20 unreasonable, given that this is one of the very few
21 panels on which we will be spending what some people
22 may consider an excessive period of time given the
23 subject matter of the panel, it is probably the one in
24 which we may spend this day and maybe half a day on,
25 and we certainly have not, I think, contributed overly

1 to the extended hearings that we are being subjected
2 to. We are all party to it, but I don't think that we
3 can be singled out for that.

4 And I don't know of an instance since the
5 hearing started when members haven't asked or counsel
6 haven't asked to go into evening sessions. It may have
7 happened while I was not present on some of the panels,
8 and we will need a couple of hours to try to -- because
9 we are very cognizant of what you said earlier of
10 trying to streamline it and perhaps cut down on
11 superfluous material and we want to make it more
12 precise and more relevant from your perspective, where
13 we think necessary, without comprising the things that
14 we need to put on the record.

15 THE CHAIRMAN: We are not asking you to
16 compromise anything, Mr. Williams. We are just asking,
17 and we will give the indulgence of breaks from time to
18 time, we feel that it is in the interest of the
19 parties, in the interest of the hearing to sit longer
20 hours and, in this case, sit today to try and complete
21 the cross-examination.

22 MR. WILLIAMS: Well, Mr. Chairman, I have
23 to be subject to your direction. I would ask then, if
24 we might, after I am finished with these -- Mr. Kennedy
25 and Mr. Clark, to adjourn until seven o'clock and start

1 again at seven o'clock, because I need some reasonable
2 time to do the things that I have indicated to you we
3 want to do.

4 THE CHAIRMAN: Very well. We will
5 consider -- after you have finished this, we will
6 consider that, having an adjournment until this
7 evening.

8 MR. FREIDIN: Mr. Chairman, one matter of
9 procedure. Was the letter from Mr. Ward -- 1983 letter
10 marked as an exhibit and, if so, what is the number?

11 THE CHAIRMAN: Exhibit 367.

12 MR. FREIDIN: Thank you.

13 THE CHAIRMAN: Ms. Swenarchuk?

14 MS. SWENARCHUK: I was just going to ask
15 the Board to also consider whether -- I understand the
16 procedural discussion you wanted to have later and
17 which you indicated would not take a long time. I
18 wonder if you considered having that at five o'clock
19 and are you ready to deal with that?

20 THE CHAIRMAN: Okay. The Board did
21 indicate earlier that it would enter into a procedural
22 discussion regarding the scoping issues.

23 It was the Board's intention really
24 before we rose for this week, to put before counsel,
25 very briefly - I don't think it would take more than

1 five or ten minutes at the outside - some thoughts that
2 the Board had for counsel to consider over the weekend
3 with a discussion on those thoughts being entered into
4 next week.

5 So we are not asking for counsel's
6 discussion today because you will just be seeing the
7 Board's suggestions for the first time. We will just
8 briefly read them into the record so they will be
9 available for everyone on the transcript, and I think
10 we could do that around five o'clock, or whenever you
11 are finished with this latest series of questions, Mr.
12 Williams. And then that will be the end of the
13 discussion, Ms. Swenarchuk, until next week.

14 MR. WILLIAMS: The discussion on scoping
15 is going to take place after I have concluded my --

16 THE CHAIRMAN: Well, it will take place
17 after you have concluded, but it will take no longer
18 than five or ten minutes. So just before we have that
19 break that you are requesting, we will just get it on
20 the record.

21 MR. WILLIAMS: Q. Mr. Clark, just coming
22 back for a few moments with regard to the integrated
23 resource management process, is my understanding
24 correct that this is a concept that has been developed
25 whereby the resource people in the different operating

1 areas of your Ministry have equal opportunity to
2 participate in that planning exercise and to bring and
3 have equal opportunity to bring the necessary resources
4 to bear to provide equal weight to the relevant
5 information introduced into the exercise?

6 MR. CLARK: A. I think that that's
7 generally a description of what happens, yes.

8 Q. You had mentioned earlier, in
9 explaining some of the broader functions and activities
10 on the timber management side of the process to
11 indicate the reason for greater funding for timber
12 management operations, projects such as road
13 construction, I think you used that as an example.

14 And because of the complexities of the
15 forest management operation, did you not also indicate
16 that it required greater depth of detail as far as the
17 development of data collection?

18 A. Well, I don't know if I would say it
19 required greater depth of detail. I think the point I
20 made was that there is certainly a great deal of
21 information that's collected, which Mr. Kennedy
22 referred to in his evidence, that requires a
23 substantial amount of effort and expenditure of a
24 significant amount of money in order to procure.

25 Q. Does the forest and wildlife

1 management operation of the Ministry have the same
2 depth - sorry, fish and wildlife - fish and wildlife
3 management section of your Ministry have the same
4 depth, detail and quality with regard to its data
5 collection undertaken, given its staff and financial
6 resources available to it?

7 A. A tricky question. I have never
8 really thought of them as strictly in -- as comparing
9 on that -- I have never compared them strictly on that
10 basis. I keep wanting to get back to something I said
11 earlier: The kind, amount and specificity depends on
12 the problem being dealt with and that varies.

13 We have established minimum information
14 requirements for fish and the establishment and the use
15 of the fish guidelines. We have a policy that
16 establishes the requirements for wildlife information
17 in timber management planning. In terms of fisheries,
18 we have identified -- made provisions for those
19 instances where the information is not available. I am
20 not sure that I can compare in terms of detail because
21 the uses are somewhat different.

22 Q. Understandably they would be
23 different, but as far as the ability of each in
24 performing their functions and to collect the detail
25 that they feel is going to provide the quality in

1 delivery of service based on that data collection, does
2 an equal opportunity really exist between the two
3 different management operations, given the limited
4 staff and financial resources that exist, one side as
5 compared to the other?

6 THE CHAIRMAN: I hope that the witnesses,
7 when answering a question like that, will answer it
8 only to the extent that they can.

9 It is more helpful to the Board if it is
10 within your knowledge or within your expertise or
11 whatever, you answer the question directly, but it is
12 also more helpful to the Board if you can't answer the
13 question to so state, rather than attempt an answer
14 which may be only partially accurate.

15 MR. CLARK: I am inclined to go back to
16 what I said earlier. It is a little like collecting
17 apples and oranges.

18 We are collecting different kinds of data
19 for different kinds of uses, and I don't think that I
20 can make that comparison. I think the question that we
21 address is whether or not the data is sufficient to
22 meet the needs of the particular program involved in
23 the process.

24 MR. WILLIAMS: Q. As a district manager,
25 wouldn't that be your duty and responsibility, to make

1 those type of decisions as to whether there was a need
2 for greater data on the other side to equalize the
3 quality of the information being provided from both
4 sectors?

5 MR. CLARK: A. My job as a district
6 manager was to ensure that we had a sufficient
7 quantity, quality of data to meet the particular
8 requirements of the particular problem or job that we
9 were doing.

10 It wasn't so much a case of saying: Do
11 we have as much in fish and wildlife as we have in
12 timber. It was: Do we have enough information to
13 assess the potential effects, the potential of risk --
14 the risk of harm being done, do we have enough
15 information to assess what the most effective means of
16 either preventing, mitigating or remedying problems.

17 Excuse me -- Mr. Pyzer.

18 MR. PYZER: A. Mr. Williams, if I can
19 help Mr. Clark for one second, I will give you an
20 example maybe and the Board.

21 In terms of a fisheries problem, one that
22 I am certainly dealing with is Shoal Lake and Clear
23 Water Bay where we have some very significant fisheries
24 management problems on Lake of the Woods.

25 There - and I am coming back to Mr.

1 Clark's point about the type of problem and the
2 requirements, specificity of data - there we have
3 probably got fisheries information and data which is
4 every bit as good as. In terms of long-term data and
5 trends and population analysis and water quality data,
6 because of that specific fisheries management problem,
7 to try and compare the two, it is probably every bit as
8 good and detailed as we would have on the forestry side
9 to do a forestry management plan.

10 And I suspect it is probably even more,
11 it is long-term data on Lake of the Woods over 20, 30
12 years and because of the problems there, we have put a
13 special team in, they have collected special data,
14 special pieces of information.

15 I think on that problem I can make a case
16 for saying that we have more specific fisheries data
17 than we do in the district on most of our forest
18 management problems. I think that's what Mr. Clark is
19 trying to say. If you have a fisheries problem, as we
20 do on Shoal Lake and Clear Water Bay, we collect the
21 information required to make that fisheries decision.

22 On the other hand, if it is a forest
23 issue, then you collect the required information
24 necessary and if it crosses both lines, you do the same
25 there. And I think there are lots of examples where

1 the type and amount of data that you have collected and
2 the amount of time that you have spent and the amount
3 of people that you have dedicated to the process is
4 relative to the problem that's at hand.

5 MR. WARD: A. If I can give you an
6 example from Red Lake. When I worked in Red Lake
7 District, in terms of district managers being able to
8 make decisions in terms of moving manpower around or
9 whatever to try to handle inventory needs of one
10 program versus another, in 1985, when we had I believe
11 two or three timber management plans going on and we
12 were preparing input into them, we had to expand our
13 inventory program.

14 It won't be reflected in terms of budgets
15 and dollars allocated to the fish and wildlife program
16 because we utilized two permanent staff members from
17 lands that helped to supplement fish and wildlife
18 crews. We have used funding programs, such as the
19 experience program, to supplement the inventory
20 program. And so when there is a need identified, the
21 district manager can marshal the resources available to
22 him.

23 And that one summer in particular, we
24 surveyed 50 lakes for timber management planning
25 purposes. I think in terms of our work program

1 planning, we said we were only going to do about 16.
2 We had the utilization of a fire helicopter, we flew
3 about 50 hours, which is roughly \$50,000 worth of
4 helicopter flying provided to us by our fire program,
5 because 1985 in Red Lake District was a very wet summer
6 and we have guaranteed contracts with helicopters.
7 When you pull them there, it is a 204-helicopter, they
8 want to fly for 130 hours or whatever, they are
9 guaranteed a certain amount of money.

10 So fire wasn't going to utilize them
11 fully, it was in the prerogative of the district
12 manager to say: Can we utilize this fire helicopter
13 for fish and wildlife inventory, and we had approval
14 from our fire branch to do that. So we ended up
15 getting, you know, really tripling our inventory
16 program without basically adding any more dollars to
17 fish and wildlife budget.

18 MR. CLARK: A. Just one other point, if
19 I may. I always get the sense that when we talk about
20 this we have this vision of the good guys have got so
21 much information and the bad guys or the others don't.
22 I mean, it always seems to me there is this dichotomy
23 that exists.

24 I want to just re-emphasize, I think the
25 piece of evidence that we tend to want to ignore, it

1 seems. And that is that we have a planning team, and I
2 emphasize the word team. These people all work for the
3 Ministry of Natural Resources, they all have as their
4 objective turning out a good timber management plan and
5 there are specific provisions in the planning process
6 to ensure that certain minimum information requirements
7 that are really pre-existing obligations are collected
8 and reviewed.

9 And I think Mr. Kennedy can reference the
10 sections in the document that speak to that particular
11 issue, because I think it is really important in terms
12 of the particular question you are raising.

13 MR. KENNEDY: A. In the context of the
14 planning process, if you would refer to pages 113 and
15 114 which deal with discussion of the Environmental
16 Assessment Document, which deal with the discussion of
17 the items that are involved in step 1, the planning
18 process, which is assembly and analysis of background
19 information.

20 These reference the type of information
21 that's collected and the types of people that may be
22 providing information.

23 Q. I am sorry, which page now, 114 or
24 113?

25 A. The very bottom of page 113.

1 Q. Yes?

2 A. And the top first paragraph on 114.

3 The examples given by Mr. Pyzer and Mr.
4 Ward are very good examples to illustrate the point
5 where they are indicating that in the absence of
6 information that has been collected -- I am sorry,
7 during the phase of collecting and analysing
8 information during step 1 of the planning process, if
9 it is found that there is information lacking, there is
10 direction here to go out and collect that information.
11 And the two examples given by Mr. Ward and Mr. Pyzer in
12 fact reflect that.

13 I would just like to draw your attention
14 then, it is a formalized step that's shown on page 114.

15 THE CHAIRMAN: Is really, panel, the gist
16 of what you are saying that the Ministry operates
17 really on an integrated resource management basis, so
18 that you can really tap the expertise of any of your
19 branches or sections, firstly; and, secondly, when
20 looking at the availability of staff resources and the
21 adequacy of those staff resources, your planning
22 process is primarily project-specific?

23 You take a look at the specific problem
24 on the specific project and you decide at that point in
25 time whether you have got the adequate staff resources

1 or data or other resources necessary to, in your view,
2 effectively deal with the problem or the project?

3 MR. KENNEDY: Yes, Mr. Chairman, very
4 much so in terms of -- especially after identifying if
5 there are gaps in the information.

6 The planning team concept is using the
7 integrated resource management approach in terms of
8 getting our staff together, both resources in terms of
9 outright dollars for purchasing of equipment or
10 information, but also in the shared way of using our
11 staff tactfully go out and collect that information,
12 again, which is reflected in the program.

13 There is a variety of ways in which that
14 shared information is being done. We have got shared
15 maps in the district, we have got loaning of staff
16 between different programs that Mr. Ward has referred
17 to as a common function, we have got technical staff
18 that are shared between programs.

19 In Dryden District we had staff that were
20 shared between the fire program and the timber. There
21 were staff that were shared between fire and fish and
22 wildlife, and occasionally those individuals switched
23 around to timber.

24 We are doubling up on field visits. We
25 have the sharing of cost of equipment, photo surveys.

1 Very much it is a way of trying to gather as much
2 information as possible when we have identified a
3 deficiency, and the way we would identify the
4 deficiency would be during the step 1 which would be
5 the assembly, analysis of existing information.

6 Mr. Pyzer, perhaps you can...

7 MR. PYZER: Well, I was going to make
8 really the same point Mr. Kennedy did.

9 But another analogy that I would make is
10 when we have a fire situation in the district, every
11 person in the district has another assigned duty and,
12 in a bad fire situation, we physically lock the front
13 door and everyone switches desks, if you will, and
14 everyone is totally committed to that fire exercise.

15 And the analogy in terms of putting
16 together the forest management plan is exactly the same
17 thing. We actually have a service within Kenora
18 District which is a total IRM service, integrated
19 resource service which co-ordinates that whole program,
20 but we look at -- in simple terms, we look at the
21 production of a timber management plan not unlike a
22 fire, and that that is the project, that is the
23 objective.

24 Fire, it is to put it out; in terms of
25 timber management, it is to produce that management

1 plan with all services working.

2 We have a district management committee
3 which I chair. Every timber management plan is
4 previewed by the IRM committee, an IRM committee that
5 we call it. When it has been vetted through that
6 committee represented by every service, it comes to the
7 district management committee and that district
8 management committee is composed of every supervisor,
9 and when the timber management plan comes to the
10 district management committee, we review every area of
11 concern, we review every piece of correspondence on
12 supplementary documentation and every supervisor has
13 the opportunity to look at the data in and the decision
14 that was made before it leaves and goes across to the
15 region.

16 MR. WILLIAMS: Q. Well, let me ask you
17 this: You were making a point that there is, as I
18 understand it, adequate staff resources to provide the
19 database and the inventory necessary to deal with these
20 matters on the timber and non-timber management side.

21 And yet, Mr. Pyzer, in dealing with your
22 aquatic inventory process or plans, my recollection is
23 that you advised in evidence that you didn't make
24 provision for doing survey work before and after timber
25 harvesting activities around given lakes, that that

1 wasn't factored into the process.

2 And how can there be equal opportunities,
3 if you will, for providing quality of information if,
4 in one instance, FECs monitoring can be provided with
5 regard to programs on one side of the ledger and not on
6 the other?

7 MR. PYZER: A. Actually, I believe that
8 was Mr. Ward that was talking about the aquatic and the
9 monitoring area.

10 Q. I am sorry, it was, yes.

11 A. And before he answers that, though, I
12 guess the only other thing that I would re-emphasize
13 that he made before - and it truly has always surprised
14 me and it has been a curious element - is that the
15 conservatism that we make when we don't have the
16 information, if I was a tourist operator or someone
17 with great concerns in terms of fish and wildlife, in
18 all honesty, I'm not certain I would be pressing the
19 Ministry as hard as some of our interest groups do
20 press us to get what they seem to think is a lack of
21 data because, in the final analysis, usually what it
22 does is shortens up the area they would have got had we
23 not had the information to begin with.

24 I think our -- as a district manager,
25 speaking as a district manager, when I know that

1 information isn't there, we tend to make, in my
2 estimation, extremely conservative decisions and,
3 again, it has never failed to -- it has been a curious
4 point with me why people press us to collect more when
5 what they are getting originally without the data is
6 more than they get with it.

7 But I will let Mr. Ward answer the other
8 question.

9 MR. WARD: A. I would like you to repeat
10 the question, if you could.

11 Q. What I was inquiring about was with
12 regard to the particular program that we just discussed
13 at some length that you had introduced your aquatic
14 survey program and questions were raised as to why
15 provision wasn't made for - in fact, we raise this in
16 our interrogatory - why provision wasn't made for
17 surveying before and after the fact, relative to major
18 impacts such as timber harvesting on given lakes that
19 had been previously surveyed which, of course, brings
20 us to the FECs monitoring situation.

21 If there isn't adequate staff and
22 resources to do that, can there be an equal balancing
23 of quality of program if it is available on the other
24 side of the ledger in the timber management operations?

25 MR. WARD: A. I would say that in terms

1 of our inventory program it is not a monitoring
2 function. I think I tried to explain that in my
3 evidence, that it is a point in time; it gives us
4 information -- the minimum critical information that we
5 need for instituting the fish habitat guidelines, and
6 we have the policy there and the guidelines and it is
7 for implementing those things.

8 In terms of monitoring the effects of
9 timber harvesting on the aquatic environment and, in
10 fact, whether the guidelines are sufficient or not or
11 whether they are too restrictive, we have a FECs
12 monitoring program in place or proposed, and I guess
13 Panel 16 will be addressing that.

14 And, again, that is a new initiative and
15 would require additional staffing and dollars to do
16 that kind of program. It is not something that we can
17 do internally with existing staff and dollars.

18 And basically I have stated that in terms
19 of our inventory program, now with the policy in place,
20 that unless you have the information, you don't cut,
21 will protect fisheries habitat and that is the process
22 we are going through.

23 THE CHAIRMAN: Mr. Williams, I think I
24 would like to assure you that the Board is most
25 interested in the monitoring aspects of this

1 application and we have been told before it would be
2 dealt with specifically by a later panel and,
3 therefore, I think it would probably not serve a useful
4 purpose at this time to get into monitoring aspects of
5 the planning process.

6 We have heard some evidence that this is
7 something that is being proposed, will be before the
8 Board, and I can assure you that even if it were not
9 before the Board in terms of the proponent's
10 application, the Board would nevertheless be interested
11 in that aspect.

12 We certainly consider monitoring to be an
13 essential part of any application under the
14 Environmental Assessment Act.

15 MR. WILLIAMS: Thank you, Mr. Chairman.
16 Just give me a moment, would you, Mr. Chairman.

17 Q. Mr. Ward, how do the guidelines, the
18 fish guidelines that you have been talking about, make
19 up for the inventory or lack of inventory?

20 MR. WARD: A. Well, the guidelines
21 are -- when you have the -- well, I should say the
22 policy gives us direction where you don't have
23 inventory information; in other words, it is a
24 protection type of direction.

25 If you don't have the information, you

1 are not cutting to the shorelines of lakes, and the
2 guidelines tell you that if you do have that minimal
3 information how you develop prescriptions. And we feel
4 that if you have that information and you develop the
5 prescriptions as outlined in the guidelines, you will
6 be protecting fish habitat.

7 And basically the Exhibit 349, which is
8 behind me, illustrates how we use those guidelines when
9 we have the minimal information to protect fisheries
10 habitat. So it is not dependent on whether you have
11 inventory information or not.

12 If you don't have the inventory
13 information, we are basically going with a continuous
14 reserve because, in the first situation, if you don't
15 know the fish species that are present in the lake, it
16 may be a lake trout lake and, therefore, for lake trout
17 lakes you have to have a continuous reserve around it.
18 If you don't have slope information, you can't modify
19 or reduce the width of the reserve from 90 metres down
20 to something else because it might be a steep slope, so
21 you have to go with the maximum, 90 metres. So when
22 you know the fish species are present and you know the
23 slope, you can modify and reduce the width of the
24 reserve.

25 If you know it is not a lake trout lake

1 and it is a warm water or a cool water lake; you can't
2 have cutting to the shoreline unless you know where
3 critical habitats are or are not present. So you have
4 to have that shoreline cruise, you have to go around
5 and find out where those habitats are present. When
6 you have that information, you know where the critical
7 habitats are, then you can put the reserve to protect
8 them.

9 So it is sort of a step process, with the
10 more information you have, the more fine tuning you can
11 do in your timber management.

12 THE CHAIRMAN: Would it not also be true,
13 Mr. Ward, that the less information you have the more
14 stringently applied the guidelines are?

15 MR. WARD: That's correct, yes. That is
16 why I mentioned earlier that the timber industry is
17 probably interested in getting that information because
18 it would free up more wood for them.

19 MR. MARTEL: Do they do a fair amount of
20 that work? Does the industry itself provide the MNR
21 with that kind of information so that they can input it
22 in their database?

23 MR. WARD: In some cases the timber
24 companies provide certain types of information in terms
25 of, like, what fish species are present because some of

1 their people are onto lakes before we are.

2 But I know we have gone in company
3 helicopters to survey lakes and situations. That is
4 about the extent that I know of the contribution in
5 terms of our inventory program.

6 MR. McNICOL: To help with your question,
7 Mr. Martel, with regard to wildlife habitat, some of
8 our best information comes from company foresters in
9 terms of refining prescriptions that we have made maybe
10 two or three years beforehand without access to the
11 particular site.

12 The company foresters, in the course of
13 laying out roads or in pre-cuts, will come to us with
14 much better on-the-ground information which allows us
15 to make a much more reasonable description to satisfy
16 our requirements, as well as handle some of the
17 concerns that they might have from an operations
18 standpoint.

19 MR. MARTEL: Thank you.

20 MR. WILLIAMS: Q. Mr. Ward, will you --
21 sorry, were you going to answer further to the question
22 by Mr. Martel?

23 MR. WARD: A. No.

24 Q. How do you know which lakes to apply
25 your guidelines to if the inventory hasn't been used to

1 identify, for example, the cold water and the warm
2 water lakes?

3 A. Well, if we don't have that inventory
4 information, we have to assume they are a cold water
5 lake.

6 Q. You have to assume it?

7 A. Yes.

8 Q. And yet on the other side of the
9 ledger, you would have the hard data with regard to all
10 of the timber information you need to know as to the
11 undertaking of a harvest, for instance?

12 THE CHAIRMAN: No, but, Mr. Williams,
13 isn't by assuming it is a cold water lake, doesn't that
14 mean that the most stringent provisions of the
15 guidelines have to be imposed, meaning a total reserve
16 around the whole lake?

17 If the guidelines offer protection by way
18 of reserves, if you knew it were a warm water lake,
19 according to the evidence, you might be able to have
20 only partial reserves. If it is a cold water lake, it
21 has to be an entire reserve and by assuming it is a
22 cold water lake, you are applying the reserves in the
23 most restrictive fashion possible, so that is the
24 protection, as I understand it.

25 MR. WILLIAMS: Yes, I understand the

1 point, Mr. Chairman. I think it is well taken.

2 All right, thank you.

3 Q. Mr. Kennedy, database maps, page 110
4 of your evidence.

5 MR. FREIDIN: Which page was that?

6 MR. WILLIAMS: Page 110.

7 Q. This is a small point, you may have
8 made it earlier in evidence, I haven't had the time to
9 check this part of the transcripts.

10 You describe the four types of maps, the
11 national topographical series maps, the MNR provincial
12 series, forest resources inventory maps and then,
13 fourthly, the MNR Ontario basic maps new programs.

14 Could you indicate what category the
15 Ontario basic maps falls into, whether it is the static
16 or cumulative and what the nature, the use is and how
17 new the program is?

18 You may have commented on it the other
19 day, if you have I am sorry to have to ask you to
20 repeat that, but I would just like to have that
21 information in evidence.

22 MR. KENNEDY: A. Yes, could I just have
23 a moment. I want to check the catalogue to see if
24 there is a further reference in there that I might
25 direct you to as well.

1 Q. All right.

2 A. Sorry, for the delay. I do not find
3 any additional information in the catalogue, I thought
4 there might have been in there. It is a relatively new
5 program, I am not sure exactly when it has started. I
6 would characterize it as a static map in one sense,
7 that they will be -- as I understand them, they will be
8 published through our Surveys and Mappings Branch.

9 Q. That wasn't one of the exhibits you
10 produced the other day?

11 A. No, it was not, it is a relatively
12 new program.

13 Q. All right.

14 A. There is not, at this time, complete
15 coverage for the area of the undertaking, and I have
16 not used them in the area that I have worked and I did
17 not include them as an exhibit, no.

18 Q. What is the purpose and, I presume,
19 benefit or they wouldn't be introduced as a new
20 program? What benefits will these maps provide that
21 the others don't, or what information do they contain
22 that the other maps wouldn't show and towards what
23 purpose?

24 A. I would compare them to the national
25 topographic series maps and also portions of the

1 provincial series maps.

2 As I understand it, it is a program
3 using, I believe it is GIS information, in order to
4 produce the maps. It is being done with on new scales
5 and it is, I believe the scales are 1:20,000, and for
6 municipal areas I think it is 1:10,000.

7 There are some brochures that are
8 available that outline the program that I believe we
9 could make available. It is useful before -- again,
10 providing broad features similar to the topographical
11 map series. I could undertake to get additional
12 information on that if you prefer.

13 Q. That would be helpful, yes. Thank
14 you.

15 MR. BEECHEY: A. Mr. Williams, I may be
16 able to add a little further information than that.

17 Q. All right.

18 A. The Ontario basic mapping program was
19 initiated, oh, what would be -- it is a fairly recent
20 initiative and it is intended to provide more detailed
21 mapping for resource-based mapping to serve the
22 Ministry's objectives.

23 It is part of, I guess, a government-wide
24 program to develop systematized mapping that is going
25 to tie in with geographic information systems in the

1 longer term to which the province has some commitment.

2 Scales generally I believe for the area
3 of the undertaking are 1:20,000 south of there, and
4 part of the area of the undertaking would be 1:10,000,
5 probably the Algonquin regions, the eastern region, and
6 that ties in with the scale of aerial photography that
7 is being flown for that area.

8 In near urban areas in the south, scales
9 range from 1:5,000 I believe and in some instances for
10 municipal areas as detailed as 1:2,000.

11 The maps have several advantages --

12 Q. So this is to provide higher
13 definition?

14 A. That's correct. The maps have some
15 advantages over the national topographic series
16 obviously in terms of the level of detail and the
17 scale, as well as they have finer vertical and
18 horizontal control in the map itself. So that in terms
19 of precision, the maps tend to be more accurate than
20 those in the NTS system.

21 They show standard contour information.
22 I am not sure of the contour intervals, it would vary
23 with the scale, but certainly at 1:5,000 it would be
24 quite detailed as compared to what the contour interval
25 is on 1:50,000 NTS maps.

1 Q. In your particular area of expertise,
2 have you been making use of these new maps?

3 A. We have used these maps not so much
4 for our aerial-wide surveys, our reconnaissance
5 surveys, but more so for more detailed studies of
6 specific sites and we are tending to more and more lock
7 into this as a standardized map base because, as I say,
8 it does correspondence to the photography and it does
9 provide a greater level of detail and precision for
10 mapping and ground cruising features.

11 Q. All right. I think really the only
12 other piece of information was just how new or how
13 current that program is and are these types of maps
14 available to the public at large or are they...

15 A. Oh, they are available for sure. I
16 am not certain myself as to what the coverage is at the
17 present time.

18 The priority has been to, I believe,
19 complete the 1:20,000 primarily to meet our resource
20 management objectives and there has been emphasis in
21 providing coverage at the 1:10,000 scale for much of
22 southern Ontario to service broader governmental needs.

23 MR. KENNEDY: A. I might add, Mr.
24 Williams, that Dr. Osborn made reference to these that
25 these will be the maps that will be used in the future

1 for the base for the FRI maps.

2 Q. At page 111, Mr. Kennedy, you state
3 that:

4 "Road location information is used,
5 amongst other things, by the general
6 public for business and recreational
7 purposes."

8 Now, does this mean that a person
9 considering, say, the building of a tourist lodge or an
10 angler or a hunter or a boater or bird watcher or
11 wilderness hiker, anyone wanting to pursue their
12 recreational preferences, can any of them go into one
13 of your Ministry offices and obtain this road access
14 information?

15 MR. KENNEDY: A. Yes, they can.

16 Q. Page 112 you involve yourself in the
17 presentation of evidence regarding the forest resources
18 inventory. From the evidence that you have given, am I
19 correct in stating that the FRI inventory system is
20 unsuitable for wildlife uses?

21 A. Did you say: Are you correct in
22 saying that FRI is unsuitable for --

23 Q. Unsuitable for use in inventory
24 non-timber; in other words, non-timber resource
25 information?

1 A. I would say it would be incorrect to
2 state that it would be unsuitable for non-timber
3 information, and that there is some non-timber
4 information that can be gleaned from the maps and from
5 the ledger data that accompanies them.

6 MR. McNICOL: A. I can support Mr.
7 Kennedy in that statement. Before we got into a
8 detailed habitat inventory program, when I spoke to the
9 new initiative and the new funding that was available
10 for that purpose, in areas that were not accessed and
11 that we did not have regularly collected information
12 for, we made great use of the FRI sheets to determine
13 those areas where there was potential to hold moose and
14 other wildlife populations.

15 And if you look back to -- maybe I can
16 direct you to page 310 of the evidence statement.

17 Q. 310?

18 A. Page 310. This is the procedural
19 document for implementation of the wildlife information
20 for use in timber management planning. If you look at
21 point (b):

22 "In order to implement moose habitat
23 guidelines, identify areas of high
24 present or future value as wintering
25 habitat. Such areas will be confirmed by

1 the sighting of animals or their tracks,
2 or they may be identified by a
3 combination of the following habitat
4 characteristics..."

5 And it goes on to list those habitat
6 characteristics.

7 The information available on FRI conforms
8 to this information; in other words, you would be able
9 to identify those areas from the FRI sheets given those
10 characteristics.

11 MR. KENNEDY: A. I might add, Mr.
12 Williams, that I made reference to the reports that are
13 useful for that purpose on page 116 of my evidence.

14 Q. Well, can a forest stand be correctly
15 identified through aerial photography as to its
16 species, age and height without ground truthing as far
17 as doing a complete assessment of a forest stand from a
18 moose habitat perspective, as an example. Could that
19 be accomplished?

20 A. My experience is, yes, it can. The
21 official wildlife or biologist that I worked with, they
22 were able to use the informations contained on the FRI
23 maps. Some of the stands are ground truthed, as you
24 recall from the evidence given by Dr. Osborn in Panel
25 3, other stands are interpreted from the photos, and on

1 the basis of local knowledge, foresters and biologists
2 are able to make assumptions based on their knowledge
3 and experience of what kind of conditions would be on
4 the ground in the way of brough species, openings, the
5 ability of the stand to provide cover.

6 And, in that regard, I would say that,
7 yes, the information from the photos can be used to
8 provide adequate information on moose habitat, but
9 perhaps Mr. McNicol would like to add a few words on
10 that.

11 MR. McNICOL: A. The FRI sheets, I
12 believe there has been a great deal of evidence
13 presented by Mr. Osborn in terms of how the FRI
14 inventory is derived and, of course, the first step in
15 doing that is to take aerial photographs of the areas
16 and then there is interpretation done from those aerial
17 photographs.

18 I believe in Mr. Osborn's evidence he
19 would have indicated that when the typing is done it is
20 done on a more general basis. It is not perhaps as
21 specific, there are some generalizations made when you
22 look at typing groups of stands.

23 But, using FRI in conjunction with the
24 actual aerial photographs - which is the technique that
25 we use - allows you to define, for instance, in a mixed

1 wood stand where, if there is concentrations of a
2 deciduous component within what is classed as a mixed
3 wood stand, whether that mixed or that deciduous
4 component is concentrated or whether it is dispersed
5 relatively uniformly across the stand.

6 So that is the detailed information that,
7 one, the FRI sheet leads you to an assumption of a
8 mixed wood stand. If you look at aerial photographs,
9 you can then get more detail about that particular
10 stand and assess its value as wildlife habitat.

11 Q. Let's just use a specific example,
12 Mr. McNicol. Let's say we have a site class 3 for
13 aspen which would be considerably different from a site
14 class 3 for spruce. Would you agree with that?

15 A. I would.

16 Q. And isn't there a vital difference
17 there as far as the appropriateness or adequacy of the
18 habitat from a moose preference point of view?

19 A. Well, indeed, but of course that
20 information is available on the FRI in terms of the
21 site class designations.

22 Q. I am sorry, I missed that.

23 A. The site class information is
24 available on the FRI sheet so that information is
25 available.

1 Q. Well, would that type of
2 information -- would that have been picked off an
3 aerial survey or would that have required ground
4 truthing as well?

5 A. That is an area of technical
6 expertise that I think Mr. Kennedy is much more versed
7 than I, so I will let him answer the question.

8 MR. KENNEDY: A. In here, all I would be
9 doing would be to referring to some of the evidence
10 given earlier by Dr. Osborn. It is my understanding --

11 Q. I know you gentlemen keep referring
12 to Dr. Osborn's evidence but, I am sorry, I didn't have
13 the advantage of being here to hear his testimony,
14 so...

15 A. Very well.

16 Q. And I haven't had...

17 THE CHAIRMAN: Well, Mr. Kennedy, I don't
18 think the Board wants a complete repeat of Dr. Osborn's
19 testimony on the FRI.

20 MR. KENNEDY: Thank you.

21 MR. WILLIAMS: I wasn't inviting that,
22 Mr. Chairman.

23 THE CHAIRMAN: That lasted several weeks.

24 MR. WILLIAMS: I hear it was extensive.

25 THE CHAIRMAN: But in order to answer his

1 question in a concise fashion, could you indicate
2 whether or not you can make stand class
3 differentiation, whether you can ascertain that
4 information from aerial photographs, at least the ones
5 who do the interpretation of the aerial photographs?

6 MR. KENNEDY: Yes.

7 THE CHAIRMAN: Or is it something that
8 does require a cruise to verify?

9 MR. KENNEDY: The correct way in
10 responding to that question is to indicate that the FRI
11 does have an element of ground sampling built into the
12 process. When the forest resource inventory is being
13 produced, ground sampling occurs first in the process,
14 aerial photograph interpretation is a follow-up
15 exercise where stands that were cruised on the ground
16 are photointerpreted, they are compared to the
17 information that was gained on the ground, as well as
18 the stands that adjacent to those sampled ground sample
19 plots and between the ground sampled plots are
20 photointerped using the trained interpreters that have
21 undergone a variety of training which, in the majority
22 of cases now, includes those individuals doing the
23 photograph interpretation, doing the actual ground
24 sampling in an area.

25 So the individuals that are doing the

1 interp have been out usually the season before
2 participating in the ground surveys. So there is high
3 level of reliability between the stands that have been
4 photointerpreted without ground sampling.

5 MR. WILLIAMS: Q. As I understand are
6 your answer, you really require application of the two
7 components; both the aerial photography and the ground
8 truthing to be totally effective in utilizing it for
9 undertaking the --

10 THE CHAIRMAN: Plus extrapolation. It is
11 a sampling program. Obviously you are not going to
12 ground cruise the entire forest.

13 MR. WILLIAMS: Of course not, but for
14 different purposes, which is not to do the
15 identification, you need with -- relative to the size
16 and quality and type of trees there.

17 But for this other purpose, it is a
18 question of determining whether that would be adequate.
19 That is simply all I am trying to establish.

20 And that is why I want to be clear that
21 you really would need those two features, the aerial
22 photography would have to be supplemented by some
23 ground survey work to really give an accurate
24 identification of the type of stands for purposes of
25 determining whether it is the appropriate type of

1 . stands for providing food for, say, the moose
2 population in the area.

3 MR. KENNEDY: Yes, it would require some
4 ground sampling in that sense.

5 MR. WILLIAMS: Q. Okay.

6 MR. KENNEDY: A. There would be an
7 indication provided from the photos on the maps but it
8 would be wise to have a ground truth, yes.

9 And I make that distinction, Mr.
10 Williams, particularly when you mention food, the
11 ability to see brow species on aerial photographs is
12 somewhat limited, being that the photos are taken from
13 the height they are as well as in the leafless
14 condition.

15 MR. McNICHOL: A. If I could just add to
16 that. As Mr. Kennedy states, it is very difficult to
17 see brow species, but when you look at a mixed wood
18 stand with an open canopy there are certain things that
19 you know from experience are going to exist in the
20 understorey, and given the speciation of the overstorey
21 and the nature of the openings and the canopy, with
22 experience, you will know what is growing in the
23 understorey. So you can learn a lot from those aerial
24 photographs.

25 Q. Mr. Kennedy, Dr. Baskerville had

1 stated that there is a need to use FRI more effectively
2 in its original broad sense as a way to assess the
3 forest of a unit in terms of its convergence on
4 declared management objectives.

5 Isn't this another way of saying that
6 there is a need to include impact, prediction and
7 analysis of timber management activities on non-timber
8 resources?

9 MR. KENNEDY: A. If you wouldn't mind,
10 could I have a page reference and a minute or two to
11 have a look at the context of that statement.

12 Q. Page 37, I believe.

13 THE CHAIRMAN: Exhibit 16.

14 MR. WILLIAMS: Yes, Mr. Chairman.

15 MR. KENNEDY: Did you say page 37, three
16 seven?

17 MR. WILLIAMS: Q. Just give me a moment.
18 I am sorry, page 44, the last sentence in the last
19 paragraph before the new subject matter entitled:
20 Silviculture.

21 MR. KENNEDY: A. I am not quite sure
22 what Dr. Baskerville was referring to.

23 Q. He is dealing with the FRI process?

24 A. Yes, I see that.

25 THE CHAIRMAN: Mr. Williams, we have

1 raised this in the past dealing with Dr. Baskerville's
2 report and that is; I think it is fair to ask the
3 witness: Does he agree with a statement made by Dr.
4 Baskerville in his report. As far as any
5 interpretation by the witnesses as to what Dr.
6 Baskerville meant in his report, I think the Board
7 would like to save those questions for Dr. Baskerville.
8 That is one of the reasons why we determined early on
9 in this hearing that we would like, if possible, Dr.
10 Baskerville to appear.

11 It just doot further anything by this
12 witness trying to figure out, in his mind, what Dr.
13 Baskerville meant since Dr. Baskerville is the author
14 of report and he obviously knows what he...

15 MR. WILLIAMS: If he doesn't understand
16 what Dr. Baskerville--

17 THE CHAIRMAN: If he does not agree or if
18 he does not know what Dr. Baskerville was getting at.

19 MR. WILLIAMS: --was striving at, of
20 course, that's your answer.

21 THE CHAIRMAN: Mr. Kennedy, the answer to
22 the question is one of two things: Either you are sure
23 of what Dr. Baskerville meant in your own mind and are
24 willing to answer the question, or you answer the
25 question on the basis that you are not sure what Dr.

1 Baskerville meant and we will then save it for his
2 appearances.

3 MR. KENNEDY: I am not sure what he
4 meant, no.

5 THE CHAIRMAN: And I am not asking you to
6 answer either way. You provide the answer.

7 MR. KENNEDY: No, I believe that what I
8 had originally indicated, that I am unsure as to what
9 is meant. I can take a number of guesses, but I would
10 prefer not to do that.

11 THE CHAIRMAN: That is in a non-leading
12 question.

13 MR. KENNEDY: Thank you.

14 MR. WILLIAMS: Q. Mr. Kennedy, assuming
15 that in effect what Dr. Baskerville was calling for was
16 a broader application of the FRI process, doesn't
17 Rosehart, in his report, which is Exhibit 93, give
18 added support to this approach being suggested by Dr.
19 Baskerville when he states at page 112 of his report
20 that FRI is a service function, a central function that
21 is potentially useful to all areas of MNR operations?

22 MR. KENNEDY: A. I think I am unable to
23 answer that question as well in that I am not sure to
24 what Dr. Baskerville meant in the original quote that
25 you made in the broader application.

1 Q. All right. Putting Dr. Baskerville
2 aside, what is -- and can you respond to Rosehart's
3 view as expressed in his report?

4 A. Could you direct me to a paragraph,
5 please, on page 11.

6 Q. The fourth paragraph on the left-hand
7 column he states that:

8 "It is apparent to this committee that
9 the FRI is a service function, a central
10 function that is potentially useful to
11 all areas of OMNR operations."

12 Do you agree or disagree with that
13 observation of that committee?

14 A. I would agree. I would go further to
15 say that it is currently useful to many areas of the
16 program as indicated by the evidence by Mr. McNicol.

17 Q. Are you familiar with the Rosehart
18 Report and its recommendations, Mr. Kennedy?

19 A. I am familiar with a number of them.
20 I can't say that I am intimately familiar with the
21 entire document, no.

22 Q. Dr. Rosehart suggested that the
23 mechanism for doing this is that as set out in his very
24 first recommendation?

25 A. Yes.

1 Q. Are you in agreement with that
2 recommendation, is your Ministry in support of that
3 proposal?

4 THE CHAIRMAN: How do you relate this to
5 the direct evidence that was tendered by this panel?

6 MR. WILLIAMS: By which...

7 THE CHAIRMAN: Well, how do you relate a
8 discussion of the Rosehart Report to the direct
9 evidence led by this panel upon which your
10 cross-examination is based, presumably.

11 MR. WILLIAMS: Well, Mr. Chairman, we
12 have before us a whole section on the forest resources
13 inventory and evidence has been provided that it has
14 been limited to dealing with timber resources
15 exclusively. That evidence has been put on the record
16 and...

17 THE CHAIRMAN: Where is that evidence on
18 the record, that FRI is just limited to timber
19 resources?

20 MR. WILLIAMS: That, Mr. Chairman, is --
21 I have to track that source down. It is my
22 understanding that it was entered in evidence.

23 THE CHAIRMAN: Because I think we have
24 just heard, I think, several panels have, to my
25 recollection, said things to the contrary. But even

1 apart from that Mr. McNicol just indicated a few
2 minutes ago that the FRI is uses by the Wildlife
3 Branch, to some extent, for wildlife purposes.

4 MR. KENNEDY: Mr. Williams, with respect,
5 I believe you asked me that question directly and I
6 responded, no, that there is additional information
7 other than the timber resource itself that's shown on
8 FRI.

9 THE CHAIRMAN: Certainly as I recall, Mr.
10 Williams, some of Dr. Osborne's evidence led the panel
11 to believe that FRI was used for more than just timber
12 resources.

13 MR. WARD: If it will help, Mr. Williams,
14 I can amplify on its application for our program area.
15 As long as I have been involved in carrying out surveys
16 to meet provincial park objectives, FRI mapping has
17 been consulted as one reference aid to assist in that
18 work in the area of the undertaking by itself and, more
19 importantly, in connection with aerial photography,
20 other kinds of terrain, geological, physiographic
21 mapping which might be available.

22 So certainly from our program area, as
23 with Mr. McNicol's program area, we do draw on that as
24 an important reference aid.

25 MR. WILLIAMS: Q. Does FRI provide

1 system benefits to fish and wildlife as it does to
2 timber?

3 MR. KENNEDY: A. I think I would ask Mr.
4 McNicol to respond on that in that I could respond on
5 it providing benefits to the timber program, but I
6 don't think I would be qualified to speak on the
7 benefits that the fish and wildlife program were
8 provided.

9 THE CHAIRMAN: Mr. Williams, with that
10 question, I mean, do you mean quantitatively?

11 MR. WILLIAMS: Yes.

12 THE CHAIRMAN: Well, I think I am going
13 to have to ask you what the relevance of an answer to
14 that question is to the matters that we are deciding.

15 I mean whether FRI provides 50 benefits
16 to the timber side and 49 benefits to the resource --
17 the other resource side, what does that mean?

18 MR. WILLIAMS: All right. I am just
19 coming to my last question, might assist you -- the
20 last few questions.

21 Q. Mr. Kennedy, if this system does not
22 provide a holistic approach to dealing with all of the
23 forest resources, does the recommendation or proposal
24 of Dr. Rosehart with regard to establishing the natural
25 resources information service as a central natural

1 resource data secretariat incorporating forest resource
2 inventory, would that be beneficial to adopt that type
3 of recommendation?

4 MR. KENNEDY: A. Mr. Williams, so that
5 we are not - I don't mean to be cute - but you used the
6 phrase, all of the forest resources. Could you be a
7 little more specific? What are you referring to there,
8 in the term FRI?

9 Q. As distinct from timber resources,
10 forest resources being all of the resources, timber and
11 non-timber resources within the forest and land in the
12 area of the undertaking, so as to deal with wildlife
13 and other natural resource data so that they would be
14 grouped together and that FRI could be applied in a
15 more holistic fashion?

16 A. I think there would be some benefit
17 in pursuing that as an idea with the recommendation
18 that is made here to have somebody look into the idea,
19 yes.

20 MR. McNICOL: A. Mr. Williams, if I
21 might just comment on that and perhaps to reassure you
22 that that information indeed is very useful from a
23 wildlife standpoint. One of the most exciting things I
24 see coming in the future from a wildlife habitat
25 management standpoint is the marrying of FRI, GIS and

1 the forest ecosystem classification.

2 Now, these instruments, at least with
3 regard to FRI and FEC, are directed ostensibly at
4 forest management, but they are extremely useful in
5 terms of information bases for wildlife habitat
6 management and the marrying of those three things and
7 GIS to let us grapple with the complexity of large land
8 bases is very exciting from a wildlife habitat
9 management standpoint.

10 I know foresters are excited about it,
11 but we also are excited about it.

12 Q. And would this permit the fish and
13 wildlife staff people to use it as effectively as the
14 timber management people are presently using it?

15 A. The information is going to be
16 available from a forest management standpoint. Once a
17 geographic information system is in place, FRI is going
18 to be there, hopefully in the future FEC also will be
19 available as a layer that can be drawn upon and there
20 will be a whole range of other layers that will be used
21 to analyse different situations on different land
22 bases.

23 That information is not just going to be
24 available for forest management purposes, it will be
25 available in a district context and will be used for a

1 multiple range of uses and analysis.

2 MR. WILLIAMS: I just have two more
3 questions, Mr. Chairman, and then I would like to
4 break.

5 THE CHAIRMAN: Very well.

6 MR. WILLIAMS: So we will have a little
7 time to prepare for this evening.

8 Q. Is it within your knowledge or to
9 you, any one of panel advise as to what the status is
10 with regard to the Rosehart recommendations and
11 proposals; has the Ministry gone beyond the study stage
12 as far as the merits or otherwise of inducing such a
13 system.

14 MR. FREIDIN: Mr. Chairman, I believe
15 that that was dealt with my Dr. Osborn, but perhaps if
16 we could leave that question and consult the
17 transcript, I believe that I went through those
18 recommendations with Dr. Osborn, one by one.

19 That's my recollection, a long time ago.

20 MRS. KOVEN: Was that the eight-point
21 memo?

22 MR. FREIDIN: Oh, you mean the action
23 plan. That was ten points which we produced as part of
24 the Environmental Assessment Document. That was the
25 action plan that was in response to Dr. Baskerville's

1 report.

2 But I believe I dealt with the Rosehart
3 recommendations and Dr. Osborn addressed that. And I
4 would like an opportunity to look at the record.

5 THE CHAIRMAN: All right. During the
6 break tonight, would you look at the transcripts. If
7 you do find something in the transcripts on that, would
8 you mind photocopying the three or four pages so that
9 Mr. Williams could see the answer and then see if it
10 can be pursued any further with this panel.

11 I mean, there is no sense in repeating it
12 if it has already been answered by Dr. Osborn who is
13 probably in a better position to indicate where the
14 Ministry is at on that report.

15 MR. WILLIAMS: Yes, Mr. Chairman. This
16 would be an opportune time to adjourn.

17 THE CHAIRMAN: Very well. Ladies and
18 gentlemen, before we rise for the break, if you would
19 just hold your seats for a couple of minutes, I am just
20 going to very briefly indicate some of the thoughts
21 that the Board has had with respect to the preparation
22 expected of counsel and others for the scoping session
23 which will commence at the outset of Panels 8's
24 evidence in February.

25 In trying to determine some workable

1 scheme so that we can all get the benefit of what
2 scoping may or may not be able to deliver with respect
3 to streamlining the process from here on to the end of
4 the hearing, the Board has considered the following
5 suggestions. And the purpose of me indicating them to
6 you now is so that you can consider them for the
7 remainder of this week and part of next week.

8 So that before we rise next week, which
9 is before the break effectively until February, we can
10 have a discussion next week on what you think of these
11 suggestions and perhaps you can assist the Board with
12 providing suggestions of your own, if the ones we are
13 going to suggest do not, in your view, address the
14 potential problems effectively. We would like to
15 suggest the following:

16 Firstly, we would ask parties submitting
17 witness statements - and, of course, in that context we
18 are asking the Ministry at this point, since they are
19 the ones that are submitting the statements at this
20 point in the hearing - to provide a listing of issues
21 in point form which are dealt with in the statement.

22 Now, we perceive this statement of issues
23 to be somewhat different from the executive summary
24 that has already been produced with respect to a couple
25 of the statements and which is to be produced with

1 respect to all future statements, in that you should
2 not be addressing any arguments or anything in support
3 of a position which is outlined in the statement, but
4 rather trying to ascertain what the actual issues are,
5 again, in point form, that are dealt with in the
6 statement.

7 And, in this regard, we are suggesting
8 that the Ministry provide the Board and other parties
9 with such a statement with respect to Panel 8 - we
10 understand that Panel 8 has already been distributed -
11 by January the 9th, 1989.

12 The reason for this is: We would like
13 the parties and the Board to have the time to consider
14 the statment of issues prior to recommencing on
15 February the 1st.

16 Now, again, we feel that the party
17 preparing the statement is probably in the best
18 position to attempt to define the issues in that
19 statement in a very concise form because they prepared
20 the statement, they obviously designed it, they
21 obviously know what issues they are trying to cover in
22 that particular panel's evidence and it would be
23 easier, from that point of view, for the party
24 preparing the statement to prepare the statement of
25 issues.

1 Now, on the first day when we come back in
2 February, with respect to Panel 8, the Board will
3 conduct what we have called a scoping session and we
4 envisage it might take the following form:

5 Firstly, all parties and the Board would
6 agree to a list of the issues involved in that panel's
7 evidence and we anticipate that, firstly, the proponent
8 or the party preparing the witness statement has
9 provided a statement.

10 Now, the Board will have an opportunity
11 to review that, having already read the witness
12 statement as well, so will the other parties. There
13 may be agreement that the statement of issues as
14 presented to the parties is complete; there may be
15 disagreement. Other parties may find within the
16 evidence presented in written form that there are other
17 issues that have not found their way to the statement
18 of issues and that is the reason for reviewing it at
19 the outset with the parties, and with the benefit of
20 the Board's interpretation of what the issues are as
21 well, to make sure that we have consensus that the
22 statement of issues covers all of the issues which both
23 the Board and the parties are interested in.

24 And when I say interested in, which are
25 covered by that panel's statement. There may be other

1 issues the parties are interested in, but are not
2 necessarily dealt with by that panel.

3 MR. FREIDIN: When you say other parties
4 may believe that there are issues raised other than the
5 ones on the Ministry's list, do I understand you to say
6 that they believe that the witness statement gives rise
7 to issues which are not contained in that list?

8 THE CHAIRMAN: That is right. And that
9 is why I made the last comment. Other parties may
10 think there are other issues of interest, but we are
11 only interested in the issues relating to that panel's
12 direct evidence, as outlined in the witness statement.

13 MR. FREIDIN: Can you indicate how you
14 propose or suggest that the issues be framed? Are you
15 looking for a statement, that in this panel, the
16 Ministry will attempt to establish one, two, three,
17 four, five, six, that's one way of doing it?

18 Another way of doing is to say, in
19 relation to this panel, we believe the issues arise as
20 follows: Is such and such and such and such, you know,
21 there are different ways -- you know, can it be left to
22 the proponent to identify that?

23 THE CHAIRMAN: I think it can, but I
24 think your question is a good one, Mr. Freidin.

25 I think that is something that perhaps

1 between now and the discussion next week both the Board
2 and counsel should give some thought to. I do not know
3 what the best way is and maybe collectively we can
4 arrive at a consensus as to which form it should take.

5 And, once again, I think the parties have
6 to realize that this is a very new enterprise by both
7 the Board, and I would suggest the parties, to a
8 hearing of this nature. So there will be a certain
9 amount of trial and error. We are trying to at least
10 have a workable system in place for Panel 8. I suggest
11 it will probably be refined as we go along, so that
12 when we get to some of the other parties presenting
13 statements, we will have a workable system in force.

14 Now, secondly, we then anticipate that
15 once the statement of issues has been arrived at in a
16 complete form, hopefully by way of consensus, the Board
17 will review each of the issues in order to ascertain
18 the following:

19 One, those issues upon which the parties
20 and the Board agree need not be addressed orally at
21 all; that is, either in direct or in cross-examination
22 and, obviously, those issues would fall into the
23 category of being uncontroverted in the sense of not
24 being an issue.

25 Secondly, we will try and ascertain those

1 issues upon which some parties wish to cross-examine,
2 meaning some parties do take issue with what is in the
3 witness statement, but which the Board feels are
4 addressed adequately in the material, to the point that
5 the Board will direct the party calling the panel that
6 further direct evidence orally is not required at that
7 point.

8 MR. FREIDIN: Can I just have one moment,
9 please, Mr. Chairman.

10 THE CHAIRMAN: Now, that will not prevent
11 any party who takes issue with that particular issue
12 from cross-examining the panel on that issue, and it
13 will not prevent the party calling the panel from
14 addressing, by way of oral testimony, some of the
15 matters raised in cross-examination by way of
16 re-examination.

17 Before you get too agitated, Mr.
18 Freidin - since this applies essentially to you, in the
19 first instance - what we are saying is up for
20 discussion next week. But what we are saying is:
21 There will be, we hope, a category of issue that the
22 Board, having reviewed the witness statement, feels is
23 explained or dealt with adequately in written form.
24 That does not mean that some parties will not want to
25 cross-examine on it. It is not the first category

1 which is something that is, essentially, not an issue
2 by anybody.

3 Some parties will wish to cross-examine.
4 They will be allowed to cross-examine the panel and the
5 proponent will be allowed to re-examine the panel on
6 anything arising out of cross-examination. So if
7 elaboration has to be made in view of counsel for the
8 proponent, it will be brought out, to a certain extent,
9 by way of re-examination as opposed to elaborating in
10 direct oral.

11 MR. FREIDIN: Can I just indicate what I
12 think are issues I see that perhaps we should think
13 about between now and next week arising out of that.

14 THE CHAIRMAN: Okay.

15 MR. FREIDIN: No. 1, the proponent is the
16 person who believes that that information or oral
17 evidence is to be led, but the Board for some reason
18 believes or does not agree, does that mean that there
19 is an opportunity for the Board to indicate to the
20 proponent that no evidence will be called, No. 1; and,
21 No. 2, without being facetious could you indicate the
22 criteria on which -- we should give some consideration
23 to the criteria upon which the Board would make that
24 decision.

25 THE CHAIRMAN: Okay. Let me try and

1 answer that in a moment after I go through the third
2 category which may assist.

3 Issues upon which some parties wish to
4 cross-examine and the Board believes merits oral
5 examination by the proponent in direct, the Board will,
6 of course, allow oral testimony to be given in direct,
7 provided that it is not repetitive of what is in the
8 witness statement itself. And lastly, in any event,
9 the Board will be attempting to restrict parties to not
10 more than one day of direct evidence, orally.

11 Now, we are talking, of course, of
12 parties who are represented by counsel and parties who
13 are obliged to prepare and produce witness statements.
14 And that provision will, in the Board's view, demand a
15 certain amount of focusing or scoping on the part of
16 the parties in deciding, that if it is one of those
17 issues upon which oral evidence is presented, they have
18 a certain amount of time within which to emphasize
19 whatever else they feel must be added to what is in
20 writing, provided it is not repetitive and, in that
21 instance, should assist the streamlining of the
22 process.

23 Now, as far as your criteria as to what
24 circumstances the Board would allow or not allow oral
25 direct evidence. I think it is difficult to give, in

1 general terms, Mr. Freidin, without experimenting to a
2 certain extent with a particular issue in front of us.

3 We will try between now and then to maybe
4 develop some broad general criteria, but I would
5 suggest to you that this is going to be very issue
6 specific and will depend, to some extent, upon how the
7 witness statements themselves have been formulated, how
8 complete they are, and whether or not, in the Board's
9 view, the matter can be adequately covered by
10 re-examination should something be left out, or whether
11 it is complete enough in the Board's view in a written
12 form subject, of course, to parties who may disagree
13 and cross-examine.

14 MR. FREIDIN: I make a comment.

15 THE CHAIRMAN: Okay, a brief comment
16 because we do not really want to get into a discussion
17 of it now. We are just throwing out some ideas and
18 suggestions.

19 And, again, we are not producing what we
20 are producing today by way of an order or a ruling, we
21 are solely submitting to you all some suggestions
22 because we have also given some thought to: it is a
23 good idea to scope, I think we all agree, we would all
24 like to focus more in terms of the hearing process, but
25 the big question is, how do we get there?

1 And we are determined to get there in
2 some fashion, it is a matter of how and, of course, we
3 want to be fair to everyone and yet, at the same time,
4 we want to somehow cut down the oral presentations in
5 areas that we can, where we feel that it is covered
6 adequately by the written material.

7 So do you have anything specific to
8 comment on right now, Mr. Freidin, because I do not
9 want to allow you an opportunity to comment because I
10 think, in fairness, everyone else and this is not the
11 purpose of this session.

12 MR. FREIDIN: No, I am not going to say
13 anything else. The intent of my earlier comments were
14 not to indicate a position one way or the other, just
15 to indicate a thing which I think perhaps --

16 THE CHAIRMAN: No, and I think it is
17 quite right. Now, this does not preclude, by the way,
18 any counsel getting together amongst themselves in the
19 next four or five days, discussing what we have said
20 and even trying to reach some kind of consensus amongst
21 yourselves. Or, if you have got a better proposal,
22 present it.

23 I think the Board just wants to emphasize
24 we are determined to come up with something. So do not
25 come back to us, I would suggest, and say: We have

1 thought it all over, we do not think any of it will
2 work, and we are not prepared to try anything because,
3 in that case, the Board will strike out on its own, so
4 to speak, and try something, but we would like
5 everybody's input, we think it would be helpful.

6 MR. FREIDIN: One issue has come mind,
7 maybe it comes to my mind because my client is
8 presenting evidence at the present time. I suppose
9 if you can give some direction now, that's fine; if
10 you can't, I would raise it again as something to
11 consider: Is if the person calling evidence believes
12 that one day is insufficient in regard to the subject
13 matter --

14 THE CHAIRMAN: You can apply to the Board
15 for leave to extend it. In those circumstances,
16 depending on what the argument is, we would be quite
17 prepared to consider it.

18 In other words, we are putting into
19 effect, we hope, a generalized rule. Any general rule
20 or ruling is subject to being modified by the Board in
21 specific circumstances.

22 Okay, that is all we want to say on that
23 at the moment. We would like to adjourn at this point,
24 Mr. Williams, to give you an opportunity to prepare
25 some of your further material.

1 MR. WILLIAMS: Until 7:30, Mr. Chairman.

2 THE CHAIRMAN: 7:30. We will be back at
3 7:30.

4 ---Upon recessing at 5:30 p.m.

5 ---Upon resuming at 7:30 p.m.

6 THE CHAIRMAN: Be seated, please.

7 MR. FREIDIN: Mr. Chairman, just a couple
8 of procedural matters. I will deal with just one now,
9 I will save one until the end.

10 In relation to the Rosehart report, I
11 think you asked that I produce the three or four pages
12 that may have been dealt with at the time that we dealt
13 with Dr. Osborn's written evidence and we kept throwing
14 in where it related back to the Rosehart report.

15 So it is really in a number of volumes,
16 XX, XXI, XXII, Mr. Castrilli cross-examined in XXVI.

17 I understand that Mr. Campbell has also
18 made available to Mr. Williams what his computer says
19 is all the evidence that was led in relation to the
20 Rosehart report, at least as the computer reports it.

21 So I think that it's probably as good a
22 place for Mr. Williams to start and I think he will
23 probably find the answers to most of his questions
24 there.

25 THE CHAIRMAN: Okay, thank you.

1 MR. WILLIAMS: Mr. Chairman, I am sorry,
2 I am just missing one document here, if you will give
3 me a few moments.

4 THE CHAIRMAN: Okay.

5 Hang in there, Mr. Kennedy, don't leave
6 us now.

7 MR. KENNEDY: It was the coffee.

8 MR. WILLIAMS: Mr. Chairman, just before
9 proceeding, my request of the Board is that should I
10 not be able to conclude my cross-examination by 9:00
11 p.m. this evening, that the proceedings for the day
12 adjourn and we resume tomorrow morning, so that I will
13 be in a position to do justice to my client's case,
14 given that I would have been on my feet for 12 hours
15 and feel that the issues start to become somewhat
16 clouded after that period of time in dealing with the
17 evidence, and I will be in a much better position to
18 deal with the remaining issues, if they are there, by
19 9:00 or 9:30 -- perhaps 9:30 tomorrow morning.

20 THE CHAIRMAN: Well, let's deal with it
21 then. Let's see where you are, and we may find that in
22 this session the cross-examination flows more
23 expeditiously, I do not know.

24 I assume that in the last hour and a half
25 you have done some reorganization of your presentation,

1 so perhaps that will expedite things a little bit.

2 MR. WILLIAMS: Q. Mr. Ward, turning to
3 page 71 of your statement of evidence, paragraphs 30
4 and 31. These two pieces of testimony were the subject
5 matter of Question No. 3 in the Federation's
6 Interrogatory and to which you responded earlier in
7 evidence.

8 Firstly, there is one matter I want to
9 get clarified. In paragraph 30 you state that 9,000
10 lakes -- surveys have been completed on about 9,000
11 lakes in the province at the rate of about 350 lakes
12 per year on average during the last 10 years; is that
13 correct?

14 MR. WARD: A. That's correct, except it
15 should have said instead of "in the province" it is in
16 the area of the undertaking, which is what our answer
17 was to in response to your Interrogatory No. 3.

18 Q. So the answer in the interrogatory is
19 correct and what we see in front of us in the main body
20 of the evidence is incorrect?

21 A. That's correct.

22 Q Thank you.

23 A. There have been about 10,000 lakes
24 surveyed in the whole province.

25 Q. At paragraph 31 you state that 1,000

1 streams have been surveyed through the ESSA program at
2 the rate of 30 per year on an average during the last
3 10 years. And then you state: Surveyed streams are
4 located primarily in southern Ontario.

5 Are all of those streams located
6 primarily in southern Ontario within the area of the
7 undertaking or something less than that?

8 A. In response to another interrogatory,
9 which I assume all parties get copies of, I think it
10 was the Ministry of Environment No. 10...

11 Q. Well, Mr. Ward, maybe I can expedite
12 things. I don't know what that says, but I see in your
13 answer to the interrogatory --

14 A. It is Ministry of Environment No. 28,
15 Exhibit 277. We introduced that as evidence during my
16 examination-in-chief, I believe.

17 THE CHAIRMAN: Well, what is the quick
18 answer?

19 MR. WARD: The quick answer is there is a
20 little over 200 lakes or streams and rivers that have
21 been surveyed in the area of the undertaking.

22 THE CHAIRMAN: All right, thank you.

23 I think it would be beneficial for the
24 witness panel to attempt, when answering the questions,
25 to listen carefully to the question and provide the

1 answer to the question asked.

2 We would ask this of all panels in both
3 direct and cross-examination. If somebody has
4 something to add to amplify it, that is fine, but let's
5 stick to the questions being asked.

6 MR. WARD: It just depends on the level
7 of detail they want. Like, we have 193 streams and 11
8 large rivers, and we have them listed by the districts.

9 MR. WILLIAMS: Q. Would those 204
10 streams be, in part or whole, part of the same
11 tributary or river system, or are they completely in
12 different watersheds?

13 MR. WARD: A. I am not too sure of your
14 question. You mean, like, in watersheds --

15 Q. Well, the 204 streams, are they
16 related to the same watershed being in part upstream
17 tributaries or headwaters of one system?

18 A. No, they are all over the province.
19 Primarily the rivers surveyed are in northern
20 Ontario -- in the northern region where their main
21 fisheries resources reside in large rivers.

22 Streams surveys basically run around the
23 Great Lakes and basically are the permanent streams
24 that flow year round and having brook trout
25 populations. And, in southern Ontario, there is more

1 steady rainfall, I guess, and they have more year round
2 flowing streams. But Interrogatory No. 28 indicates
3 the number of standard stream and river surveys by
4 district.

5 In addition, in terms of my direct
6 evidence, I indicated that wasn't necessarily all the
7 information we had on streams. As I pointed out in
8 some of the maps on our shoreline cruise, we do collect
9 information on tributary streams that -- inflowing and
10 outflowing streams on lake surveys. We also gather
11 information on streams and rivers, for example, the
12 Nipigon River, we have critical habitats mapped, but we
13 wouldn't necessarily do all the steps that are
14 indicated in the survey, the stream survey manual and,
15 therefore, it is not submitted to Toronto as a complete
16 survey and, therefore, are not included in the 204
17 rivers and streams that we have surveyed.

18 Q. With regard to the aquatic habitat
19 inventory survey program, you state in the
20 introduction:

21 "The most important principle to be
22 followed in the collection of inventory
23 data is that it is essential that all
24 observations be accurate."

25 A. Whereabouts are you reading, Mr.

1 Williams?

2 Q. On the second paragraph of your
3 introductory page.

4 A. What page number is that?

5 Q. Page -- I am sorry, page 546.

6 A. I have it.

7 Q. Do you have that?

8 A. Yes, I do you.

9 Q. Then, the next sentence says:

10 "Inaccurate data are worthless."

11 Given the nature of this type of program
12 in which its basic characteristics are, as I understand
13 it, a one-time undertaking--

14 A. That's correct.

15 Q. --could one fairly or otherwise say
16 that dated data is worthless?

17 A. No. What that sentence is referring
18 to is that when you do your one point in time
19 measurements you have got to be careful how you do
20 those measurements, to follow the manual completely and
21 the data will be accurate.

22 But it is not referring to trend through
23 time data or anything like that, it is just basically
24 the introduction to the aquatic habitat inventory
25 survey manual saying that it is important that we make

1 accurate observations.

2 It is very easy to be sloppy when you are
3 measuring things, whether it's water level fluctuations
4 or reading a temperature gauge, that if you don't take
5 time and look carefully at what those measurements are
6 you can make a mistake. So we are basically telling
7 survey crews: Get accurate information, make sure you
8 are reading the proper number on the dial or whatever.
9 That is what that statement refers to.

10 Q. Given that a number of the major
11 programs of the Ministry and, in particular, the
12 District Land Use Guideline programs, provide for
13 intermediate updating on a ten-year cycle basis, and as
14 do, I believe, the Strategic Land Use Plans themselves,
15 wouldn't it be appropriate for this type of program
16 also to have a periodic updating provision to ensure
17 that that one time information was as relevant and
18 accurate in 1984 as it was in 1974?

19 A. There are advantages of repeating
20 lake surveys. I believe the manual refers to when you
21 should repeat them. If the situation has changed or
22 you suspect that maybe the equipment wasn't as accurate
23 as equipment we are using now, people have gone and
24 redone chemistry surveys, for example.

25 I know in eastern Ontario where I worked

1 down there, we didn't have the number of lakes, we got
2 into resurveys and especially any surveys done prior to
3 1973 which didn't really follow all the steps outlined
4 in the present manual, we ended up doing resurveys.

5 But in northern Ontario, it is a matter
6 of where you get the biggest bang for your buck. If
7 you can spend, you know, \$2,000 per lake basically what
8 it costs to do a lake survey, you got that \$2,000, the
9 information probably is more valuable to us on a
10 completely new lake than trying to update an existing
11 lake survey, because most of the information is not
12 going to change very much.

13 For example, the bottom contour map
14 shouldn't change at all, your shoreline cruise
15 information shouldn't change at all. There may be
16 slight changes in water chemistry, and I don't expect
17 the fish species present to change that much, unless
18 you are suspecting an introduction of exotic, like
19 rainbow smelt or something like that.

20 So basically there isn't any incentive to
21 do resurveys in northern Ontario where we have got
22 enough water out there to -- that hasn't had a survey
23 and that's where we like to put our money.

24 Q. If there was a major disruption of
25 the adjoining land base, would that not be

1 justification for making an exception to the rule and
2 determining after that disruptive activity that the
3 quality -- or the aquatic environment was as sound as
4 it was at the time of the first survey?

5 A. If there was some kind of
6 disturbance, whether it was a proposed cottage
7 subdivision on a lake trout lake or installing a new
8 mine with effluent, we would probably do some surveys
9 and we would probably try and do more accurate water
10 chemistry surveys to try and measure impacts, which is
11 where we would expect to see and we would probably get
12 the Ministry of Environment involved in analysis of
13 water quality, which we have done recently with a lake
14 trout lake in Ignace District, where there are 200
15 cottages proposed, we have done an extensive
16 summer-long water quality sampling program to evaluate
17 the impacts of 200 cottages on the lake trout summer
18 refugium basically.

19 And so if we do have a disturbance on the
20 land, whether it is mining or cottage development, we
21 would do some additional water quality work and
22 probably maybe not even use the hat kit methodology in
23 the manual, but use a more sophisticated water quality
24 testing such as the Winkler method which we have used
25 on lake trout lakes.

1 Q. And could you explain to the laymen
2 present what the Winkler method is?

3 A. Well, basically it is a chemical
4 titration. You collect a water sample and you
5 preserve - and I am not too sure of all the chemicals
6 used, it has been a long time since I have done the
7 Winkler method, that method - but you basically
8 preserve the water sample and it sort of freezes, if I
9 can use that word, the oxygen level in that water
10 sample and you bring it back in the lab and then you
11 titrate, which means you add little drops of another
12 kind of chemical and when it changes colour exactly you
13 know what -- and you count the number of drops, you
14 know what the parts per million of oxygen is available
15 and it is much more accurate than a test kit which is
16 basically powdered pills that we use that you break
17 open.

18 So it is especially for, I guess, oxygen
19 levels below five parts per million, it is recommended
20 that you use the Winkler method. Above that, you can
21 use electronic meters that are fairly accurate for
22 measuring oxygen levels.

23 Q. At paragraph 35 you state in your
24 evidence:

25 "Where sufficient fisheries information

1 is not available to guide resource
2 management decisions, timber management
3 operations are not carried out until the
4 required information is obtained."

5 A. Correct.

6 Q. Is my recollection correct with
7 regard to evidence you gave before the dinner break,
8 that in that situation, the District Fisheries
9 Management Plan would be applied to protect -- or
10 guideline would be applied to protect the environs of
11 the lake until such time as specific information was
12 obtained?

13 A. Yes. The policy really addresses
14 that. It says, if you have insufficient information,
15 what steps are required, as I outlined before the
16 supper break.

17 Q. And, as I understand, they would be
18 applying the highest level of restriction as far as the
19 use of the adjoining lands adjoining the water body in
20 question?

21 A. Right. If you didn't know what fish
22 species were present or where the critical habitat was
23 or the shoreline slope, you would take the most
24 stringent restrictions.

25 Q. How many -- I appreciate you would

1 have to do an averaging on this and, again, depending
2 on what part of the province, but in a timber
3 management plan and undertaking, how many lakes of
4 varying sizes would one be likely to experience as
5 being part of or within that proposed undertaking given
6 the vast --

7 A. This is for an average timber
8 management plan, you are talking about?

9 Q. Yes.

10 A. About a hundred.

11 Q. About a hundred. And applying the
12 first five-year sector to the actual undertaking, are
13 we suggesting that that be divided by four?

14 A. Well, four or five. Of course, you
15 know, it depends on the timber management plan, but
16 basically I am going on my experience in Red Lake
17 District in terms of the number of lakes up there and I
18 think we were looking at approximately a hundred lakes
19 we had to develop prescriptions for that timber
20 management plan.

21 Now, that again was before we were
22 applying the rules to lakes larger than 10 hectares in
23 size and the number may be higher than that if you are
24 looking at all headwater lakes and all lakes that are
25 10 hectares in size.

1 As I mentioned earlier in my testimony,
2 when I was in Red Lake we were basically looking at
3 lakes down to about 24 hectares in size. So the number
4 may be 150 or 175, that's the ballpark to have an idea
5 of the number.

6 Q. Wouldn't it be in the best interest
7 of both ensuring a high level of environmental
8 protection as well as the economic interests of the
9 company involved in the timber management plan to
10 factor into that timber management plan a requirement,
11 prior to the undertaking of the timber harvesting, that
12 the affected lakes would be subject to the necessary
13 aquatic environmental investigation under your ESSA
14 program, or whatever, with a further requirement that
15 this be required after the fact as well for
16 determination of actual impact rather than predicted
17 impact?

18 Would it not be in everybody's best
19 interest that that be a condition of the plan in that
20 situation?

21 A. I think I tried to explain the
22 problems with point in time data before and after in
23 terms of the variability you are going to get if you
24 try and compare one year in one point in time data with
25 something five years later one point in time.

1 You know, you can never expect the same
2 climatic conditions that can affect your water
3 chemistry. You know, like you might have a storm event
4 the day before, you may have a very hot summer, you may
5 have strong year classes of some species of fish coming
6 through that you sample but you didn't sample
7 beforehand.

8 I mean, there is lots of factors in
9 there, and that's why in terms of to evaluate the
10 impacts of timber harvesting, you need some trend
11 through time data, something like the assessment units
12 would collect where they are getting two or three
13 years' of baseline data before you do any perturbation
14 to that aquatic environment, and then probably two to
15 three to five years later to evaluate the impact.

16 Sometimes you won't see impacts for five,
17 six, seven years, especially if you are dealing with
18 things like rock groundwater effects on lakes. So
19 that's one of the reasons why we have proposed - and I
20 guess Panel 16 will go into more detail - the
21 monitoring program to evaluate these effects.

22 And basically they are going to be
23 choosing lakes that are fairly similar and doing one
24 perturbation, like cutting to the shoreline on a lake,
25 and the other which is acting as a control, you don't

1 do anything.

2 But they are both in the same watershed,
3 they should be subject to the same climatic events,
4 therefore, you can monitor one, you have got it as a
5 control and then you can compare it to the other one
6 where the only thing that is different is some kind of
7 timber harvesting or a washout of a culvert or
8 whatever, and then you can definitely say: This event
9 or perturbation caused these changes in aquatic
10 community.

11 Otherwise, if you don't have that control
12 to compare these things, you know, it could be storm
13 events, it could be a whole range of factors that can
14 maybe cause the same kind of effect and you couldn't
15 necessarily say it was specifically related to a timber
16 management activity.

17 Q. Is this then the type of monitoring
18 process that you suggest should be applied in this type
19 of situation on an across-the-board basis?

20 A. I would like to see this monitoring
21 program instituted, yes.

22 THE CHAIRMAN: Will this be discussed
23 specifically in Panel 16?

24 MR. WARD: Yes, they will give you more
25 details on that.

1 MR. FREIDIN: Panel No. 8 will also be
2 discussing the general approach which is going to be
3 taken and the details of the actual monitoring will be
4 dealt with in 16.

5 When you read the Panel 8 material, Mr.
6 Chairman, you will see that there is a couple of
7 attachments. There is a document published by ESSA and
8 they deal with the work which was undertaken in order
9 to assess where and what was going to be the subject
10 matter of monitoring.

11 THE CHAIRMAN: I think in that--

12 MR. WILLIAMS: That's as far as I am
13 going on that point, Mr. Chairman.

14 THE CHAIRMAN: --instance we should deal
15 with it in other panels.

16 MR. WILLIAMS: I am trying to look for
17 some type of program or procedure that's being at least
18 contemplated for purpose of improving the environmental
19 considerations.

20 Q. Mr. Ward, we have -- in conjunction
21 with what you said as to what you would like to see
22 happen, are you able to advise whether the Ministry
23 has -- or your area of the Ministry has any authority
24 or direction to accelerate its programs under the
25 existing ESSA approach so as to improve the percentage

1 factor, more importantly improve the sampling base from
2 the present situation whereby there appears to be no
3 hard data on 91 per cent of the areas of lakes within
4 the area of the undertaking?

5 MR. WARD: A. We have our work program
6 planning where we budget for the operation, such as
7 carrying out an aquatic inventory program, and if there
8 is a need to increase the inventory program, there is a
9 mechanism in place to request more funding, instead
10 of running with one lake survey crew, running with two
11 or three.

12 And, as I said earlier, even that
13 budgeting system, we have other mechanisms such as
14 assigning the staff that are working in the lands
15 program to do lake surveys for a summer, or going after
16 experience funds or something like that to augment our
17 inventory program.

18 So it is possible, and there mechanisms
19 are in place, to get more funding and get more crews in
20 the field to increase the inventory program.

21 Q. One more question on this point,
22 then, if I might, Mr. Ward. With the provision of this
23 type of information under the ESSA program, is this not
24 in effect then providing the equivalent type of hard
25 data that is available to the foresters in doing their

1 assessment with regard to the adjoining timber
2 resources that are adjacent to those water bodies?

3 MR. FREIDIN: I think we have been over
4 this one before, Mr. Chairman. Surely he has got the
5 answer to that question.

6 THE CHAIRMAN: Mr. Williams, I think from
7 the Board's perspective, we have heard evidence that in
8 cases where inadequate data is identified with respect
9 to certain lake inventory or surveys, the most
10 stringent provisions of the policy are in fact applied
11 and they are only deviated from to a lesser stringency
12 when more data is available with which to justify it.

13 MR. WILLIAMS: So that's the interim
14 safeguard, in other words?

15 THE CHAIRMAN: That's the interim
16 safeguard.

17 MR. WILLIAMS: That's acceptable.

18 THE CHAIRMAN: And, therefore, it appears
19 until the Ministry decides that they want to apply less
20 stringent standards, then correspondingly they have to
21 increase the amount of data that they have.

22 And it seems to be sort of a quid pro quo
23 situation. It is the view of this witness that the
24 lakes are adequately protected if the most stringent of
25 the policies are in fact applied, and I do not think we

1 can go beyond his opinion on that point.

2 MR. WILLIAMS: Q. And, again, you have
3 stated that earlier, Mr. Ward, and reiterate and
4 support what the Chairman is saying?

5 MR. WARD: A. I do.

6 Q. Thank you. I am sorry there is one
7 last question there, Mr. Ward. Do the same base rules
8 apply to the streams and rivers as applies to the lake
9 systems?

10 A. It does in terms of the policy we are
11 talking about, applying the fish habitat guidelines to
12 all permanent streams that can be seen on a 1:50,000
13 topographical map.

14 Q. Mr. Ward, in the early testimony -
15 and I believe it was yourself who responded to some
16 questions with regard to wetlands - and it was drawn to
17 your attention that wetlands assessment appears not to
18 be part of your considerations in undertaking of your
19 lake and stream and river assessment; is that correct?

20 If not, please correct my understanding.

21 A. Any wetland that is connected to open
22 water, whether it is a lake or stream or river, would
23 be surveyed under the aquatic habitat inventory
24 program. And as I indicated on some previous exhibits,
25 we map the location of aquatic vegetation and the

1 manual states that you indicate whether it is emergent,
2 submergent or floating vegetation.

3 And as the exhibit that I showed the
4 Board from Kenora District, the district survey crews
5 actually identify some of the major plant species that
6 are present in that wetland.

7 Q. Well, does that mean then that the
8 wetlands are not considered as part of the forest
9 resource?

10 A. It is part of -- as far as a
11 fisheries biologist, I am concerned with that, I
12 consider wetlands a part of the fisheries resource.
13 You may have to ask a forester whether he considers
14 wetlands part of the forest.

15 Q. What is the Ministry policy on that?
16 Who can address that? Can you, Mr. Kennedy?

17 MR. KENNEDY: A. I am looking a little
18 puzzled. I am not sure what you mean, part of the
19 forest resource. It is -- some wetland information can
20 be interpreted from the forest resource inventory.

21 THE CHAIRMAN: No, but if it is part of
22 the forest resource, is a wetland available for
23 harvest?

24 MR. KENNEDY: I would say in the majority
25 of the cases wetlands do not support trees, would be my

1 understanding, and as such --

2 THE CHAIRMAN: Nor would wetlands support
3 the equipment required for harvest, generally?

4 MR. KENNEDY: That's correct. And,
5 furthermore, if there was specific values are normally
6 identified with wetlands, as I understand it, and I
7 would be expecting to see those values and features
8 identified in the planning process and it would be
9 reflected perhaps on a values map. I say perhaps
10 because they depend on a particular...

11 THE CHAIRMAN: Well, Mr. Williams, would
12 you not be asking whether or not wetlands would be
13 considered part of the forest resource and, therefore,
14 available for timber activities or harvesting?

15 Is that not the gist of your question?

16 MR. WILLIAMS: That was the next
17 question, Mr. Chairman, yes.

18 THE CHAIRMAN: I think, Mr. Kennedy, your
19 answer is normally wetlands don't support the growth of
20 trees?

21 MR. KENNEDY: Correct.

22 THE CHAIRMAN: At least of harvestable
23 type and, therefore, it would not, in that perspective,
24 be part of the forest resource?

25 MRS. KOVEN: Maybe there is some

1 controversy though about the definition of a wetland.
2 We had a long discussion with Ken Armson about the
3 development of high pressure tires that were able to
4 compensate for the fact that some harvesting was
5 undertaken in wet areas.

6 And I understood that not to just be a
7 season, not to be a wet spring season, but to be low
8 lying wet areas in the forest. And I guess that was a
9 very different situation than a wetland that you are
10 talking about?

11 MR. KENNEDY: Yes, it would be.

12 MR. MARTEL: What about cutting right to
13 the edge? I mean, do you do unlimited cutting?

14 Let's say, you have a wetland, it is not
15 connected to a lake or a river but, in fact, almost
16 like a bog but, nonetheless, might support some form of
17 aquatic life. Do you put a reserve around that or what
18 ground rules apply in that instance?

19 MR. KENNEDY: In that instance, I think
20 we would have some knowledge of it being a feature or
21 value and would enter into the process and be dealt
22 with through the area of concern planning process where
23 there would be determination of, through the area of
24 concern planning process, the determination if the
25 normal method of operations could proceed without

1 interfering with that value or feature.

2 If they could, a normal operation would
3 be prescribed for that area. If it was determined that
4 that was not suitable to protect the value or feature
5 that was present, it would be contemplated to conduct
6 an operation in a modified fashion and a prescription
7 would be developed which would outline the
8 modifications to a normal operation.

9 In some parts of the province that may
10 mean a prescription that would use wide-tired skidders,
11 it may mean altering the season of harvest or the
12 season of treatment or it may mean limitations on the
13 amount of material that could be harvested in the
14 stand.

15 If, through the evaluation, though, it is
16 deemed that it is not possible to conduct the operation
17 without impacting adversely in a significant way on
18 that value or feature, then the conclusion would be
19 that the operation could not proceed and areas such as
20 which you have described, Mr. Martel, would end up in a
21 reserve that we would call a no-cut reserve and would
22 be withdrawn from the timber harvesting plan.

23 THE CHAIRMAN: Does that answer your
24 question, Mr. Williams?

25 MR. WILLIAMS: If I might just carry on

1 then, Mr. Chairman.

2 Q. In the evidence -- in your aquatic
3 habitat inventory survey in particular, Mr. Ward, you
4 identify certain terrain characteristics, in
5 particular, you refer to shrub marsh and open marsh.

6 How do you distinguish between the two
7 and do you consider either or both falling into the
8 category of wetlands?

9 MR. WARD: A. Are you referring to the
10 definitions in the aquatic habitat inventory manual?

11 Q. Yes.

12 A. I will have to look at that. What
13 page are you looking at?

14 Q. Well, I was -- let me find it in
15 the -- page 552.

16 MR. FREIDIN: Was it open marsh and --

17 MR. WILLIAMS: Q. It is shown on 552,
18 16.8.8, shrub marsh and 16.8.9, open marsh.

19 MR. WARD: A. The definition in the
20 manual for a shrub marsh is that these areas are
21 covered for extended periods of time and with woody
22 plants of less than six metres in height.

23 An open marsh is defined as these areas
24 that are dry only periodically and contain mainly
25 herbacious plants with some woody plants less than a

1 metre in height.

2 THE CHAIRMAN: But the question was:
3 Would these be treated as wetlands, or in the same
4 manner as wetlands would be treated?

5 MR. WARD: It depends on the values that
6 may be found in those areas. Like, I would like to
7 look at something like that before I made a judgment on
8 whether it would be included or not.

9 A shrub marsh is covered with water for
10 an extended period of time. If it is covered with
11 water in the spring time there may be certain species
12 of fish that are using it as a spawning area or
13 whatever, and it would be treated as such.

14 THE CHAIRMAN: Okay. But, in any event,
15 you cannot harvest anything from it because, based on
16 your definition, it wouldn't support harvestable wood?

17 MR. WARD: That's true.

18 THE CHAIRMAN: If you cannot harvest
19 anything from it, then it would fall under Mr.
20 Kennedy's scenario possibly as being significant for an
21 area of concern and, therefore, a reserve might be put
22 around it, or if it were determined to be
23 insignificant, you might transverse it or cut right to
24 it?

25 MR. WARD: That's correct.

1 THE CHAIRMAN: Is that a fair--

2 MR. WARD: That's correct, yes.

3 THE CHAIRMAN: --summary?

4 MR. WARD: Some of these -- I don't know
5 whether in terms of a shrub marsh or an open marsh, we
6 look upon that as maybe providing some of the same kind
7 of buffering, if I can I use that word, effect as
8 plants are.

9 In other words, there is a lot of plants
10 between timber harvesting and the water, where you have
11 water, and it is a judgment call and that's one of the
12 things that we are -- you know, have biologists looking
13 at these kinds of things and a lot -- and some of them
14 have come to me say: Can we allow cutting up to this
15 alder, swamp or whatever. I mean it is another hundred
16 metres before you get to open water, what are the
17 impacts on the aquatic environment.

18 Well, my call is -- or what I tell them
19 that is; if basically there is flowing water in that
20 marsh and you are logging there, you can put nutrients,
21 you can put sediment in there and that flowing water
22 may carry into the aquatic environment. But if you
23 have got terrestrial, basically vegetation or dry land,
24 you are not going to have it moving very far through
25 that material and, therefore, would act as a buffer and

1 protect the aquatic environment.

2 So it is a judgment call and you can't
3 say one way or another whether it will provide the
4 protection unless see the specific site.

5 MR. WILLIAMS: Q. I do not see any
6 terrain characteristic described as peat marsh; is
7 there such a thing as peat marsh?

8 MR. WARD: A. No, I don't see anything
9 on peat either.

10 Q. Is it possible that it could be
11 subject to the same type of situations as the shrub and
12 open marsh, requiring a judgment call as to the
13 duration and extent of water and, more particularly,
14 whether it would attract marine life?

15 A. Well, I think in terms of peat, we
16 are more concerned with agricultural drainage, I know
17 my region in Fort Frances, than with timber harvesting
18 impacting on it, where they are actually removing the
19 peat.

20 And we have concerns of the downstream
21 affects of harvesting peat in terms of water levels and
22 that type of thing, flows of water, as it is a good --
23 you know, it is a good storage area for water and this
24 is one of the concerns we have, but it hasn't really
25 been expressed with timber harvesting.

1 Q. I don't know whether it would be
2 yourself or Mr. Kennedy who would take this question.

3 Are either one of you gentlemen familiar
4 with the Walleye Creek project?

5 MR. KENNEDY: A. I am aware of its
6 existence, I have not visited the site myself.

7 Q. Could you particularize and identify
8 that project for the benefit of the Board, Mr. Kennedy?

9 A. Subject to verification I could
10 describe it. It is an experimental drainage project, I
11 believe it is in the northern region, that is being
12 undertaken to investigate draining an area that is
13 being contemplated for forest production. That's the
14 extent of my knowledge.

15 Q. That's not too bad. Perhaps I could
16 assist you and provide more specific information that
17 would help to --

18 THE CHAIRMAN: What is the point, Mr.
19 Williams, if he has indicated that beyond what he told
20 you he does not know about that project?

21 MR. WILLIAMS: I simply have additional
22 information that will provide him with more specifics
23 on the project so that he would be more qualified to
24 answer the next couple of questions that I have.

25 MR. FREIDIN: If he gives it to the

1 witness and the witness can say that that refreshes his
2 memory and, therefore, on his own information, yes,
3 that information is correct, I think I would have no
4 objection.

5 But if in fact Mr. Kennedy sees
6 information there for the first time and whether it's
7 specific detail, I don't know how it would be helpful.

8 MR. WILLIAMS: That's what we have to
9 determine, Mr. Chairman, if in fact it can assist us or
10 whether we have to rely on another witness, because I
11 think, while we are identifying one particular project,
12 Mr. Chairman, I have to try to determine whether --

13 THE CHAIRMAN: But I mean, isn't that
14 putting you in the position of giving the evidence?

15 I mean, you asked a fair question which
16 is: Have you heard of this project or what can you
17 tell us about this project. Mr. Kennedy answered
18 forthrightly: I know a little bit about it, I am
19 willing to tell you what I know, he described what he
20 knew and indicated beyond that he knows nothing
21 further.

22 For you to put in the facts about that
23 project, respectfully Mr. Williams, in my view, is you
24 giving evidence.

25 MR. WILLIAMS: Well, Mr. Chairman, it

1 seemed to me that in making reference to the project,
2 to introduce information for purposes of eliciting
3 professional comment or advice would not be...

4 THE CHAIRMAN: But there is no
5 verification of that evidence. I mean, you are not
6 sworn, you know, you are not --

7 MR. WILLIAMS: I am not giving evidence,
8 I am simply filing a document and asking for a
9 professional comment thereon. If he is not able to add
10 anything further after looking at the document, then I
11 will consider it for another day and another witness.

12 THE CHAIRMAN: Well, I think in fairness
13 to the witness, if he is going to be asked to comment
14 on the document, he should be given it in advance so
15 that he can...

16 MR. WILLIAMS: Well, I am sorry, it just
17 came to hand yesterday again. As I said, Mr. Chairman,
18 if we had had a little breathing space we might have
19 been able to provide this to him this evening so he
20 would have had a chance if we were doing it tomorrow,
21 but...

22 MR. FREIDIN: Could I just have one
23 moment, please. May I see it, please?

24 MR. WILLIAMS: Yes.

25 THE CHAIRMAN: Is it a lengthy document?

1 MR. FREIDIN: Mr. Chairman..

2 MR. WILLIAMS: It is a three-page
3 document.

4 MR. FREIDIN: It is a document which is
5 actually issued by the Ministry of Natural Resources,
6 so they are describing what's going on in this area, I
7 suppose. I don't care if it goes in.

8 THE CHAIRMAN: Okay. Well, why we have
9 no idea what the document is until it is explained what
10 it is.

11 Why don't you put the document to the
12 witness and he can scan it and indicate if he can help
13 you.

14 MR. WILLIAMS: Thank you, Mr. Chairman.

15 MR. FREIDIN, Mr. Chairman, while we are
16 doing that I apologize for laughing, it had nothing to
17 do with the examination, but before the evening is out
18 I would recommend highly that you refer to page 131 of
19 the manual which refers to the golfball manual for
20 measuring stream dimensions and discharges.

21 THE CHAIRMAN: All right. We will admit
22 this as Exhibit 368. You are referring to the whole
23 article or waterflows and peat lands, the one that is
24 starred? Which one are you referring to, or are you
25 referring to whole thing?

1 ---EXHIBIT NO. 368: Ministry of Natural Resources
2 three-page article.

3 MR. WILLIAMS: I am referring to the
4 whole article and the proposal outline attached to the
5 Ministry article, Mr. Chairman, which provides some
6 synopsis.-- I am sorry, I apologize, Mr. Chairman,
7 there was a more specific explanation and scope of the
8 project here which is another two pages. I am sorry,
9 if that could be included with that. So it is really
10 four pages, my apologies, or five pages in total.

11 MR. HUFF: Excuse me, I don't whether
12 it's appropriate or not; what year is that?

13 MR. FREIDIN: Mr. Chairman, I am only
14 content that the article go in, I don't know what this
15 last page is or whether this witness can identify it.
16 If he can't identify it, I wouldn't be able to either,
17 Mr. Chairman.

18 THE CHAIRMAN: Well, Mr. Williams, what
19 are the last two pages?

20 MR. WILLIAMS: The last two pages are a
21 broader overview of what the thrust and purpose of the
22 project is, identifying the problem, the experience in
23 another jurisdiction applying this technique, the
24 experience in this country, the principles of forest
25 drainage and clearly...

1 THE CHAIRMAN: And that has nothing do do
2 specifically with the article itself? The article may
3 be on a similar subject but it is not part of the
4 article; or is it?

5 MR. WILLIAMS: No, that's correct, that's
6 correct. The article is simply explaining -- the
7 Ministry explaining that they were involved in this
8 project and explaining what it is. The other is a
9 synopsis of it and I cannot verify as to whether that
10 is a Ministry document.

11 THE CHAIRMAN: Okay. Mr. Kennedy, are
12 you familiar, firstly, with the document that we have
13 admitted as Exhibit 368 in the first instance, that's
14 the three-page article?

15 MR. KENNEDY: That's the --

16 THE CHAIRMAN: We will deal with the
17 second one in a minute.

18 MR. KENNEDY: This is the first time I
19 have seen it.

20 THE CHAIRMAN: The first time you have
21 seen it.

22 MR. COSMAN: Mr. Chairman, just for
23 clarification before he moves to the next document.

24 The first two pages of the exhibit appear
25 to be an MNR production. I don't have a clue what the

1 third page is, it seems to be somebody's notes about
2 it. I wonder if that...

3 MR. WILLIAMS: I can withdraw that, Mr.
4 Chairman, because we can identify the other document
5 which is more comprehensive as one at least bearing a
6 Ministry name out of the Cochrane District, an M.
7 Rosen, Cochrane District, OMNR who I think we can
8 attribute authorship to that document.

9 MR. CAMPBELL: So that the exhibit is
10 then going to be -- 369 will be the two printed pages
11 and the last page will be removed.

12 THE CHAIRMAN: That is right, that is
13 right. Okay.

14 So Exhibit 368 will be the printed
15 article.

16 MR. WILLIAMS: And the two pages which
17 are headed Walleye Creek Area, Forest-Related Project
18 Fact Sheet.

19 THE CHAIRMAN: Will go in as the next
20 exhibit, which will be 369. So keep them separate.

21 ---EXHIBIT NO. 369: Two-page article entitled:
22 Walleye Creek Area, Forest-Related
Project Fact Sheet.

23 MR. CHAIRMAN: All right. We don't have
24 a date on the latter document, or do we?

25 MR. WILLIAMS: I am afraid, Mr. Chairman,

1 anyone who has been associated with government over a
2 period of time, it has been a cross to bear that so
3 many government documents don't bear dated and this one
4 can only be approximated based on what is in the
5 left-hand column of the Ministry document dealing with
6 another subject where it is talking about December 31,
7 1984 being a date by which certain information had to
8 be in.

9 THE CHAIRMAN: Well, I don't think it
10 matters if it doesn't have a date on it.

11 MR. WILLIAMS: It is mid-80, 1980.

12 THE CHAIRMAN: Okay. Now, your questions
13 to Mr. Kennedy on the first document, Exhibit 368, what
14 are they?

15 MR. WILLIAMS: Mr. Kennedy --

16 THE CHAIRMAN: If you are in a position
17 to answer, please do so, and if not, please state you
18 cannot.

19 MR. WILLIAMS: Q. To your knowledge, is
20 this a trial project of the Ministry or is it a pilot
21 project that has been replicated in other areas of the
22 province, or if it is neither one of those, can you
23 advise on the status of this particular undertaking or
24 advise on the status regardless, whether it is one of
25 those two or something else again?

1 MR. KENNEDY: A. It is my understanding
2 that it is just a demonstration project.

3 Q. And what is the status of that
4 project, are you able to answer that now or... I mean
5 if you don't...

6 A. I believe it is ongoing. Is that
7 what you mean in terms of status?

8 Q. Yes, whether the project is still in
9 its experimentation stages or whether it has been
10 concluded with a report issued and a policy directive
11 issued or whatever. If you are able to advise on the
12 status, fine; if not, we will endeavor to extract that
13 information from some other source.

14 A. It is my understanding it is ongoing,
15 but I would need to have that verified.

16 Q. Do you know whether or not this
17 demonstration project was set up with the purpose in
18 mind, of depending on the success or otherwise of same,
19 to be used as a precedent for establishing this type of
20 policy of draining wetlands for the purpose of
21 expanding the timber product?

22 A. I don't think it is a precursor to
23 any movement in that regard, no.

24 Q. I am sorry, I missed that.

25 A. I don't think it is set up in that

1 regard, no. It is simply a demonstration.

2 Q. Could you refer us to someone who
3 could give us a more current and accurate update on the
4 status of this project so the matter might be pursued
5 to its current situation at least?

6 THE CHAIRMAN: Mr. Freidin, can you help
7 us out in that regard?

8 MR. FREIDIN: Well, I can't give you any
9 names. I am just wondering how relevant this is.

10 It is my information that this is a
11 research and development project, as such it is No. 1:
12 I guess, exempt from the Environmental Assessment Act
13 because of research and; No. 2: It is not an activity
14 for which the Ministry is seeking approval in this
15 Environmental Assessment that will form part of the
16 timber management as defined for the purposes of this
17 EA.

18 So I don't really see where it is
19 helpful. It may be interesting, but I am not sure it
20 is going to be helpful.

21 MR. WILLIAMS: Well, of course that, Mr.
22 Freidin, has addressed the very key question that I was
23 coming to, Mr. Chairman, whether the Walleye Creek type
24 of project is not a timber management plan-type of
25 activity and, therefore, is not part of this Class EA.

1 THE CHAIRMAN: Well, is that the
2 Ministry's position, Mr. Freidin?

3 MR. FREIDIN: I better be sure before I
4 say anything final. I will take it under advisement.

5 THE CHAIRMAN: Very well. You will
6 undertake to provide the answer to that question?

7 MR. FREIDIN: Yes.

8 MR. WILLIAMS: And then in the broader
9 context then, Mr. Chairman, as well - because this is
10 the specific project - I will address it to Mr.
11 Kennedy, as an environmental co-ordinator for the
12 Ministry:

13 Q. Do you envisage these types of
14 projects will be submitted as a Class EA now and in the
15 future and, if so, how will you integrate these two
16 activities when they are, for all intents and purposes,
17 the same activity?

18 THE CHAIRMAN: Mr. Williams, that would
19 be, I suggest to you, sheer speculation on the part of
20 this witness or any other witness.

21 If it is going to be submitted in the
22 future as a Class EA, I can assure you there will
23 either be a hearing, an exemption, or a ministerial
24 decision.

25 If it is not going to be submitted as a

1 Class EA and does not form part of this Class EA or the
2 matters before us, with respect, it is irrelevant to
3 this hearing.

4 MR. WILLIAMS: Well, then, I guess, Mr.
5 Chairman, we leave it to receive the information that
6 Mr. Freidin has undertaken to obtain for us.

7 THE CHAIRMAN: Okay.

8 MR. WILLIAMS: Thank you. Just give me a
9 moment, Mr. Chairman, for the next item of business.

10 Q. Mr. Ward, earlier today I introduced
11 into evidence a copy of a letter that had been authored
12 by yourself, and I am sorry I didn't get the exhibit
13 number down.

14 MS. BLASTORAH: 367.

15 MR. WILLIAMS: 367, thank you.

16 Q. Exhibit 367. And it had to do with
17 an article attached thereto entitled: Rationale for
18 Forest Reserves around lakes by Neville Ward, Regional
19 Fisheries Biologist, Northwestern Region, Ontario
20 Ministry of Natural Resources.

21 Are you the author of that document.

22 MR. WARD: A. I am.

23 Q. When was that article produced, Mr.
24 Ward?

25 A. I believe it must be in 1983, just

1 based on the covering letter that you supplied with
2 that article, but I am not sure of that, but I am
3 pretty sure it must have been the early part of 1983.

4 Q. The article was published in a
5 Journal entitled: The North American Lake Management
6 Society.

7 A. It is called Lakeline.

8 Q. Lakeline.

9 A. Lakeline.

10 Q. What is that exactly? What group is
11 that, what is their -- just so I understand why this --

12 A. The North American Lake Management
13 Society was formed in about 1979 and it basically
14 consists of individuals, organizations that are
15 concerned with lake management in North America and it
16 is a kind of group that I am a member of.

17 I am interested in that it not only
18 combines government managers of lakes, but also cottage
19 associations, public groups in industry, and anybody
20 that has involvement with lake management. So it is a
21 mixture of engineers, biologists, lawyers, concerned
22 citizens and membership on the executive is reflected
23 in that kind of makeup.

24 So it is a kind of an interdisciplinary
25 group of individuals. I think they have about a

1 thousand members I think it is, but it is a growing
2 society in the last, you know, ten years and they have
3 an annual meeting and they produce proceedings from
4 their annual meeting and I think it is serving a
5 function of disseminating information on lake
6 management.

7 Q. The other evening in evidence you
8 were referring, I believe, to Exhibit 349C behind you,
9 and we were talking about whether or not there were
10 circumstances and situations in which it would be
11 appropriate for tree cuts to go to water edge, and can
12 you refresh our memory as to what you said at that
13 time?

14 I haven't had an opportunity to get the
15 transcripts. They are available, I just haven't had an
16 opportunity to read through that one completely as yet.

17 A. Well, basically, if it is not a cold
18 water community, which means it doesn't possess lake
19 trout, brook trout, aurora trout, and in the northwest
20 region we include muskie lakes in that category as
21 well, and it is stated as such in our district
22 fisheries management plans, and we will not have any
23 cutting.

24 If it is a warm water or cool water lake,
25 like a walleye, pike lake and there is no critical

1 habitat there; in other words, basically any aquatic
2 vegetation, any rock/rubble/gravel type of areas, they
3 could allow cutting to the shoreline so you weren't
4 impacting on those critical areas.

5 Q. At the conclusion of your
6 professional article, you state:

7 "A forest reserve around every lake is a
8 positive step in fostering the multiple
9 use concept in managing Ontario's public
10 lands and waters."

11 Is that not a contradiction of what
12 professional evidence you gave us the other evening and
13 reiterated here now?

14 A. I think in terms of when I wrote this
15 and what I know now, you know, I have been gaining more
16 information in terms of reference in the literature and
17 activities that are occurring in the field from my
18 observations in the five years or six years since I
19 have wrote this article.

20 I would say that we can allow cutting to
21 the shoreline of lakes where there isn't critical
22 habitat and there won't be any impacts, we don't expect
23 that there will be any impacts.

24 And, again, that monitoring program that
25 we are proposing will be evaluating some of those kinds

1 of activities to see if what we have gathered from the
2 literature and discussions with other fish managers,
3 whether in fact that is true.

4 I think in this case here I was also
5 talking about -- you know, it is a long time since, in
6 terms of writing it, but in terms of larger lakes we
7 were looking at, and I think you will find that in
8 terms of most of our larger water bodies there will be
9 reserves around them based on the other values that
10 come with the forest reserve; not just for protecting
11 fish habitat and water quality, but for protecting
12 aesthetics, the wilderness setting for tourism, for
13 providing wildlife shelter and those things, and that
14 is what I am sort of implying, that there are a lot of
15 multiple benefits of reserves.

16 So in this example up here, in terms of
17 the guidelines; that is, again, just strictly to deal
18 with fish habitat. There may be other values that are
19 identified in that reserve such as, you know,
20 aesthetics that may not allow cutting to the shoreline.

21 Q. You explained that that deals with
22 one particular type of environmental situation, but the
23 article itself talks in absolutes and doesn't make the
24 distinctions that you say are implied as a professional
25 paper. Isn't that dangerous?

1 A. Well, not -- I don't know whether it
2 is dangerous or not. I think in terms of the -- it is
3 not a scientific journal, Lakeline, it is not peer
4 reviewed, even though I had this reviewed by some
5 people in Fisheries Branch before submitting it to the
6 magazine.

7 Basically, what we are trying to state
8 here is the -- I guess in terms of the lake managers
9 that are involved in lake management in North America
10 from a Canadian perspective of what is going on,
11 logging is one of the concerns or one of the impacts on
12 our lakes in northwestern Ontario, and I wanted to
13 outline basically from the literature that I had
14 reviewed then and what I had seen in the field at that
15 time what were some of the major potential impacts of
16 logging on the aquatic -- or particularly in fisheries
17 habitat, and I tried to outline that in basically a
18 two-page article for the magazine.

19 THE CHAIRMAN: Mr. Williams, can we not
20 take notice of the fact that this whole area is an
21 evolving one to the extent that I think any witness in
22 this area is entitled to change their opinion over a
23 period of time, provided they give the Board and the
24 questioner the basis upon which they change that
25 opinion?

1 And what I am saying there is, is that I
2 do not think witnesses who make statements in years
3 past can always be realistically expected to stand by
4 all of those statements five years later or ten years
5 later if their opinion has changed. I guess what I am
6 saying --

7 MR. WILLIAMS: I think that is the
8 purpose of the cross-examination, Mr. Chairman.

9 THE CHAIRMAN: It is exactly and what I
10 am saying is: Provided that the witness explains why
11 he has had a change of opinion, if it has, I think it
12 is sufficient to go into that.

13 And I guess why I am bringing it up is
14 because I thought some of this evidence was covered
15 yesterday in the direct testimony when, not on this
16 particular article, but on the basis that Mr. Ward gave
17 for why the Ministry's policy in the past was basically
18 total reserves or the donut business around lakes and
19 why that has evolved to whatever the present policy
20 appears to be, and that is, a specific look at certain
21 types of lakes within certain guidelines and, in
22 instances, there can be modifications to what was an
23 existing policy.

24 Is this not along the same lines as that?

25 MR. WILLIAMS: Very much so, Mr.

1 Chairman, but that is why, with the possible
2 contradiction or apparent contradiction there, we
3 wanted to certainly clarify that matter because it was
4 of trouble to us and I thought it was important to
5 bring it to the attention of the Board and have a
6 clarification, at least for our edification, and now
7 for the Board's.

8 THE CHAIRMAN: Okay.

9 MR. MARTEL: Mr. Ward, could you just
10 answer a short question for me?

11 A modification was given at the time the
12 Ministry changed its policy on the donut. What type of
13 notice was served on the public that in fact that
14 policy was going to be altered?

15 Was it just done by regulation or...

16 MR. WARD: I don't know all the historic
17 background of that, Mr. Martel. I know 50, 60 years
18 ago or 70 years ago a lot of shoreline logging occurred
19 and basically selective cutting. You can go into the
20 bush now and you can see the big stumps on the ground
21 of trees that were cut, you know, 50 years ago.

22 And certainly up in my country, basically
23 they didn't have logging roads, they used the waterways
24 for moving logs and we have some old sluiceways that we
25 have had to dismantle because they were interfering

1 with fish spawning areas. In the last five or six
2 years we have got around to removing some of them, and
3 so there was harvesting in the shoreline reserve.

4 Now, where it evolved into 400-foot
5 donuts, I am not too sure where that occurred and --

6 MR. MARTEL: Well, I can recall that.
7 What I can't recall is when it was altered.

8 MR. KENNEDY: I am unclear as to the
9 dates. I believe '82 -- possibly '82 or '84, I am not
10 sure, I attended a seminar that was held in Dryden
11 where there was a discussion between some of the forest
12 company staff and I believe there were other
13 representatives there discussing moving to a modified
14 management area approach, which was moving away from a
15 standard 400-foot no-cut reserve that had been in place
16 in some districts to a variable width, two-zone concept
17 of management around water bodies.

18 There was some consultation at that time,
19 that has since evolved into the area of concern
20 planning process, of course, and there is more
21 flexibility in the process to identify widths that will
22 provide protection of values or features once even
23 identified beyond the 400-foot which was still being
24 adopted in the...

25 MR. MARTEL: But what I am trying to find

1 out, who was involved. I am just curious. Were the
2 anglers and hunters involved, or were any of the groups
3 involved with the ecology involved in any of the
4 discussions that led up to that change?

5 I guess all I am trying to find out is
6 the background.

7 MR. PYZER: If I could help out a little
8 bit. I believe where it started from was from the
9 donuts we went actually during the time of District
10 Land Use Guidelines, and during the production of
11 District Land Use Guidelines, we started talking about
12 a concern where we identified what were then known as
13 modified management areas and we got into that whole
14 modified management area policy.

15 And that kind of begged the question:
16 What were we modifying, because we were sticking donuts
17 around all of these lakes and it wasn't clear what it
18 was that we were protecting.

19 And I guess we went - and my recollection
20 is a little foggy here - but that question started to
21 be begged and when we started looking at it,
22 particularly in fish and wildlife, but I have to say
23 that probably the main impetus at that point in time
24 was the tourist industry and I know for a fact, because
25 I was one of the ones that presented it at the Northern

1 Ontario Tourists Outfitters convention about 84-85, we
2 introduced a concept of: If we have donuts around
3 these lakes, and what was so magical about 400 feet,
4 because we started to take a look at what was 400 feet
5 doing, and if it was protecting aesthetics and we
6 started looking at that with the tourist industry, in
7 many cases we needed more than 400 feet.

8 If you were looking at a very fast rise,
9 a fast slope, 400 feet did nothing to you. You looked
10 back 400 feet and then you saw the clear cut. So if it
11 was from an aesthetics point of view, we quickly
12 determined that in some cases it should be sky line,
13 some cases it should be a thousand feet.

14 If we were looking at a gradual slope, we
15 didn't even need 400 feet in terms of an aesthetic
16 buffer or reserve, 50 or 75 or 85 feet.

17 THE CHAIRMAN: Mr. Pyzer, I hate to
18 interrupt you, but the Board has heard the rationale
19 for the change in policy, the question is: How were
20 the public notified and what was the input into the
21 change in rationale?

22 MR. PYZER: Through District Land Use
23 Guidelines, through the evolution of the modified
24 management area policy through --

25 THE CHAIRMAN: Through the planning

1 process in itself?

2 MR. PYZER: That's correct, and through
3 presentation to groups like NOTOA at their conventions
4 and to the forest industry at regional seminars,
5 workshops.

6 THE CHAIRMAN: Okay, thank you.

7 Mr. Williams?

8 MR. WILLIAMS: Q. Mr. Ward, just on the
9 last point I wanted to raise with regard to your public
10 expression of your professional views related to the
11 rationale for forest reserves around lakes, I draw your
12 attention to the first paragraph of the letter, and I
13 gather it is an expression of your professional opinion
14 that government biologists and foresters need to focus
15 their efforts on cause/effect relationships associated
16 with predicting changes in water quality and fisheries
17 habitat with various timber cutting patterns on
18 different types of sites.

19 Can this be accomplished using your
20 aquatic habitat inventory survey process?

21 MR. WARD: A. No. That is, again, the
22 ESSA monitoring program as identified, that kind of
23 focus of efforts that is required, and that is the
24 purpose of the ESSA exercise is to really zero in on
25 focus where we have to do the monitoring program, what

1 are the important links between timber harvesting and
2 the effects on the aquatic environment.

3 Q. Is the last sentence of that
4 paragraph also your professional judgment or personal
5 opinion, that to properly evaluate these impacts would
6 probably cost more than the timber in the reserves were
7 worth, especially if other users such as wildlife and
8 tourist operators were included?

9 A. I think when we go through the
10 monitoring exercise and we find out what reserves are
11 required to provide or to protect the values
12 identified, such as fish habitat or wilderness
13 experience for tourist operators, we would be in a
14 better position to confirm that statement, confirm it
15 or deny it.

16 Q. Am I correct in making a fair
17 interpretation that because of the cost factor
18 involved, the principle of applying the cause/effect
19 relationship can't be warranted or justified?

20 A. Well, I am not too sure what the
21 final cost figure is on the monitoring program or
22 whether we have come up with one, but I know it is in
23 the millions of dollars to do a proper monitoring
24 program and whether that timber --

25 Q. But your professional judgment as to

1 the worth of doing these things surely shouldn't be
2 clouded or compromised on the basis of cost, should it,
3 that is a decision that has to be made by others?

4 A. What I was trying to imply there is
5 that it might be better to leave the timber intact on
6 the shoreline because of the values it provided for
7 other uses of the forest than it would be to try and
8 spend a lot of government dollars on monitoring
9 something like this to see if -- to free up more
10 timber. That was basically the point I was trying to
11 make there.

12 And we may find such as -- you know, as I
13 said, it costs \$2,000 per lake to survey. The timber
14 around some of those lakes may not be worth \$2,000. So
15 in terms of a benefit/cost thing, nobody is going to be
16 interested in paying the money to go and survey it
17 because the companies aren't going to get \$2,000 worth
18 of money out of the wood that is around the shoreline
19 of a reserve or a shoreline of a lake.

20 Q. Wouldn't the survey for the purpose
21 of protecting the aquatic environment, rather than an
22 expression of concern as to the --

23 THE CHAIRMAN: Protecting it from what,
24 Mr. Williams?

25 If it is to determine that there is going

1 to be no timber management activities because of a
2 cost/benefit analysis, and there is going to be no
3 harvesting or other activities near the lake, why is it
4 different than one of the 10- or 15,000 or 20,000 lakes
5 in the wilderness that are not being impacted by any
6 particular activities?

7 MR. WILLIAMS: All right. I guess simply
8 what I was intending to ask, Mr. Chairman, was wouldn't
9 the cost be -- you suggested that the timber companies
10 aren't going to pick up that kind of tab and really it
11 is a broader concern and function than that of the
12 timber company, it is one that is of public interest
13 and concern and protection of the environment as such
14 wouldn't be a part of the ongoing cost of the Ministry
15 rather than a timber company as a partner to the
16 undertaking?

17 THE CHAIRMAN: Is it not true, Mr. Ward,
18 that the Ministry may not decide to survey a particular
19 lake in any event because it has no basis for
20 perceiving that anything is impacting abnormally the
21 aquatic environment?

22 MR. WARD: That's correct.

23 THE CHAIRMAN: You are not going to
24 survey every lake in the province, regardless if there
25 is any perceived impact against those lakes, when you

1 have got lakes that you know there is perceived impacts
2 against and you are going to want to channel your
3 resources, I would suspect, somewhere?

4 MR. WARD: Exactly.

5 MR. WILLIAMS: Mr. Chairman, there is
6 just one other area that I wanted to explore with Mr.
7 Ward, but it involves the introduction of another
8 exhibit and I thought it would be appropriate perhaps
9 to introduce the exhibit now so that he has an
10 opportunity to review it over the evening and we could
11 then address the issue tomorrow morning, because I
12 think it might take a little time to --

13 THE CHAIRMAN: Where are you in your
14 examination?

15 MR. WILLIAMS: Well, I think, Mr.
16 Chairman, your extension of the hearing session today
17 has been beneficial in that I can now advise you that I
18 will be assured of finishing tomorrow before the
19 adjournment time. So it has been helpful to us in that
20 respect, and perhaps even earlier.

21 THE CHAIRMAN: You cannot give us any
22 better estimate in terms of time, in terms of hours?

23 MR. WILLIAMS: Well, I think a couple of
24 hours, Mr. Chairman, that's my best judgment.

25 But, again, it depends on the responses

1 to the questions I put. So it is difficult -- I mean,
2 Mr. Chairman, if it is presenting a problem to the
3 Board, I would be prepared to proceed one day next week
4 rather than tomorrow and, in fact, I would be quite
5 comfortable with that, to go on Tuesday or Wednesday to
6 complete my cross-examination if it is of assistance to
7 the Board. In fact, I would prefer that quite frankly.

8 THE CHAIRMAN: Would you be prepared,
9 because this will make a difference in the decision of
10 the Board as to how to proceed with the remainder of
11 your cross-examination, to indicate clearly that you
12 would not be longer than two and a half hours, if we
13 were in fact to proceed next week?

14 MR. WILLIAMS: Yes.

15 THE CHAIRMAN: Because we have other
16 counsel, as you know, that are scheduled for next week
17 and we are absolutely determined to finish this panel
18 before we rise for the site visit, and we can take that
19 into account, bearing in mind what time we have got
20 next week, the counsel that we have to go, in terms of
21 cross-examination, and Mr. Freidin's re-examination.

22 Can you give us any idea, ballpark, Mr.
23 Freidin, how long you might be in re-examination? I
24 know you have not heard Mr. Hunter yet, I know you have
25 not heard--

1 MR. MARTEL: Mr. Campbell.

2 THE CHAIRMAN: --Mr. Campbell yet.

3 MR. FREIDIN: About an hour and twenty
4 minutes.

5 MR. MARTEL: Can we hold you to that?

6 THE CHAIRMAN: If we were to hold you to
7 that, would you be willing to come close to that?

8 MR. FREIDIN: I am always willing to come
9 close to my estimate.

10 THE CHAIRMAN: Our definition of close?

11 MR. FREIDIN: I would ask for the full
12 rights to finish my re-examination, regardless of how
13 long it takes, Mr. Chairman.

14 THE CHAIRMAN: Well, okay. But you feel
15 confident that you might be able to complete your
16 cross-examination within two and a half hours?

17 MR. FREIDIN: Mr. Chairman, just so that
18 you were aware of what the Ministry's position is, I
19 believe that we should forge ahead and use up the time
20 tomorrow to finish this cross-examination, because we
21 don't know what's going to happen next week.

22 And I, as much as you, don't want this
23 panel to go beyond next week. I think we should do
24 everything to make sure that doesn't happen. I worry
25 about giving up some time tomorrow.

1 MR. WILLIAMS: Mr. Chairman, I can give
2 you the assurance that we would be finished within
3 three hours and it would helpful to us to do that one
4 day next week rather than tomorrow.

5 THE CHAIRMAN: Okay. Let's have an
6 adjournment for ten minutes. We will discuss this and
7 come back and let you know where we want to go.

8 Mr. Freidin?

9 MR. FREIDIN: Well, Mr. Chairman, if I
10 can just raise one other matter. I spoke with counsel
11 for some of the parties, actually it was Mr. Cosman and
12 Mr. Campbell, about the submission or discussion next
13 week in relation to the scoping.

14 We felt that it would be -- it appeared
15 that we probably wouldn't get finished the
16 re-examination until some time on Wednesday and we
17 thought that it would be useful for counsel to get
18 together, if possible, in advance of the scoping
19 session to sit down and hash out some of the things
20 which were suggested this morning.

21 So what I was suggesting is that we set
22 aside or set a specific time for the scoping matter, be
23 it Thursday morning. No. 1, that will give us some
24 time to perhaps discuss the matter and, if other
25 counsel or parties wanted to attend, they would have

1 some idea of a specific time that it would be dealt
2 with and they can make arrangements to be here.

3 THE CHAIRMAN: Okay. I think on that
4 score - and I will discuss it with my colleagues during
5 the break - but subject to any differences we may have,
6 we would be prepared to set aside the Thursday morning
7 to deal with the scoping exercise, presuming that we
8 are finished everything, but we would also be prepared
9 to finish the evidence, to ensure that we can deal with
10 that Thursday morning, by sitting late next week, if
11 possible, until we finish.

12 Now, should we finish earlier than
13 anticipated, in terms of the re-examination, then we
14 would just probably move up the scoping discussion,
15 giving counsel some time to discuss it amongst
16 themselves.

17 MR. FREIDIN: As I indicated, my concern
18 is there may be other parties who aren't going to be
19 here for cross-examination purposes who may want to
20 attend the scoping --

21 THE CHAIRMAN: Well, they may, but we are
22 not going to sit around with an extra afternoon free,
23 et cetera, just to accommodate a scoping discussion on
24 Thursday.

25 If we finish earlier with the evidence,

1 then we will allow some time and then move up the
2 scoping discussion and I think counsel can be alerted
3 of that, who may wish to enter into that debate.

4 But based on the anticipated length of
5 time it is going to take to finish up until the point
6 of the end of the re-examination, it probably will not
7 be until Wednesday some time.

8 MR. FREIDIN: One other matter, Mr.
9 Chairman. Next week we want to have Mr. McCreadie who
10 is going to be the guide on the visit to give the usual
11 evidence and introduction to the orientation.

12 THE CHAIRMAN: How long is that going to
13 take roughly?

14 MR. FREIDIN: 20 to 30 minutes, Mr.
15 Kennedy advises me.

16 THE CHAIRMAN: Okay.

17 MR. FREIDIN: We wanted to do that on
18 Monday, but perhaps Tuesday, because I think he will be
19 in town on Tuesday. We wanted to slot that in if we
20 can. I just wanted to remind you of that.

21 THE CHAIRMAN: Yes, we should be able to
22 fit that in.

23 We will be back in ten minutes, after Mr.
24 Campbell's last comment.

25 MR. CAMPBELL: Sorry, Mr. Chairman. When

1 you are making deliberations about next week, as I
2 understand it, Mr. Hunter is sort of scheduled for
3 Monday. He has some problems I know in his schedule,
4 so it would be a matter I think if Mr. Williams is
5 going to be next week then after Mr. Hunter, I will
6 commit to half a day, if that helps you in your
7 planning.

8 THE CHAIRMAN: Somebody indicated that
9 Mr. Hunter was considering about a half a day, wasn't
10 it?

11 MR. MANDER: A day, I think.

12 THE CHAIRMAN: Sorry, one day?

13 MR. MANDER: Probably a day.

14 THE CHAIRMAN: But not longer than a day,
15 is that what he was estimating?

16 MR. MANDER: I think that's what it is
17 right now.

18 MR. CAMPBELL: I think it would be safe
19 to say that Mr. Hunter would probably use up Monday and
20 not extend into Tuesday, and I will speak to him and
21 pass on the significant wish of everybody that that
22 goal be achieved, if at all possible.

23 Then there will be Mr. Williams, myself,
24 I will commit to half a day, and then on Wednesday,
25 though, I think if there were a couple of hearing hours

1 left at the end of day, rather than just take a short
2 break and come back, I think there are some significant
3 issues in the matters that you have raised and I think
4 the Board and all parties would benefit from having not
5 a tight little time period in which to talk about it,
6 but one where we can sit down and work it over and, if
7 we feel it appropriate, develop some concensus around
8 an alternative.

9 That does not happen in a few minutes
10 necessarily, and I think it would be very beneficial if
11 some time was provided for that.

12 THE CHAIRMAN: But based on the estimates
13 of time, that could still occur either Wednesday or
14 Thursday; is that correct?

15 MR. CAMPBELL: Yes, but I think if Mr. --
16 it sounds almost certain that Mr. Freidin's
17 re-examination would be Wednesday, in which case I
18 think my view would be that the scoping discussion then
19 take place Thursday.

20 These are not uncomplicated matters and
21 there are going to be some significant - perhaps
22 differences of opinions is the wrong word - but some
23 significant views that have to be sort of worked out if
24 the Board is going to ask the counsel to get together
25 and consider a proposal that they can recommend. That

1 is not, I suspect, going to be something that we will
2 just walk in, sit down at a table and achieve
3 immediately.

4 THE CHAIRMAN: Okay. But based on the
5 scenario that you are putting forth, if Mr. Freidin
6 starts on Wednesday with his re-examination, and that
7 appears to be the case, then he is obviously going to
8 finish within an hour and 20 minutes or thereabouts and
9 that would leave at least some hours on Wednesday for
10 counsel to discuss the proposal; is that not correct?

11 MR. CAMPBELL: Yes, but to do that under
12 the circumstance where we know we have got to bring it
13 back to you in the afternoon, I think would be more
14 difficult.

15 I just support Mr. Freidin's basic
16 premise and what we talked about earlier, was that if
17 we finish at any time on Wednesday, the scoping
18 discussion take place starting Thursday morning, let us
19 work it out to the best of our ability.

20 THE CHAIRMAN: Okay. It appears from
21 what we are hearing - and again we will just discuss it
22 briefly amongst ourselves - that all counsel will be
23 accomodated and, Mr. Williams, perhaps you as well,
24 next week with time left for counsel to have a full
25 discussion on the Board's proposals and also time on

1 Thursday morning to discuss it formally and in that we
2 can also include, for example, the orientation session.

3 Now, it may not happen -- may be that
4 could be done Wednesday afternoon. Mr. Freidin, could
5 the orientation session for the site visit be
6 accomodated on Wednesday afternoon if we had that kind
7 of time?

8 MR. FREIDIN: No, Mr. McCreadie won't be
9 in town. I think he has other commitments.

10 Mr. Kennedy says we can try and switch
11 them, they may be changeable.

12 THE CHAIRMAN: Okay. But, in any event,
13 that's not going to take very long.

14 MR. FREIDIN: That's correct.

15 THE CHAIRMAN: Ladies and gentlemen, we
16 are going to discuss it amongst ourselves for about ten
17 minutes and we will return.

18 ---Recess taken at 9:15 p.m.

19 ---Upon resuming at 9:25 p.m.

20 THE CHAIRMAN: Ladies and gentlemen, we
21 have had the opportunity to discuss the scheduling
22 further and have come to the conclusion that it would
23 be in everybody's interest to adjourn the hearings at
24 this point until next week.

25 And next week starting at one o'clock we

1 will commence with Mr. Hunter, we will continue on
2 Tuesday with Mr. Williams, and we will continue on
3 Tuesday with Mr. Campbell, and that should be able to
4 complete both of those counsel.

5 Now, we should have time on Tuesday as
6 well -- I understand, Mr. Freidin, that Mr. McCreadie
7 might be able to attend on Tuesday or Thursday.

8 MR. FREIDIN: He is actually planning on
9 Tuesday.

10 THE CHAIRMAN: On Tuesday. I see no
11 difficulty, based on your three-hour estimate, Mr.
12 Williams, and your - was it a half a day estimate, Mr.
13 Campbell to also fit in Mr. McCreadie on Tuesday.

14 And even if Mr. Hunter goes over slightly
15 from the Monday before, we still should be able to
16 finish those counsel on Tuesday because, if necessary,
17 we can sit late to accomplish that.

18 On Wednesday, we will lead off with Mr.
19 Freidin in reply and you should be finished within an
20 hour and 20 minutes?

21 MR. FREIDIN: That's correct.

22 THE CHAIRMAN: And if you go over beyond
23 that, you are cutting into your co-counsel's discussion
24 time with respect to the other matter. But that will
25 allow you to have a good part of Wednesday to discuss

1 the Board's suggestions and we will deal with them
2 formally Thursday morning.

3 And, in that regard, you might even
4 consider between now and Wednesday discussing
5 informally how the scoping is actually going to be
6 managed because -- and the other thing that you might
7 also do, if any of you counsel are in touch with any of
8 other counsel that might otherwise be here and they
9 wish to participate in both your informal discussion
10 and the Board's considerations on those discussions on
11 the Thursday, you might advise them. I do not think we
12 are going to send out any kind of notice specifically
13 to the parties list or anything else.

14 I think that is probably in the best
15 interest of everybody to follow that timetable and we
16 should be able to finish everything prior to the site
17 visit.

18 But, again, if we get bogged down
19 anywhere, we will just automatically sit longer hours
20 to accommodate the witnesses and the counsel that we
21 have to deal with.

22 Anybody see any difficulties with what we
23 have proposed?

24 Okay. Counsel, you have the -- panel, you
25 have the weekend off, the next couple of days.

1 MS. BLASTORAH: You just can't talk to
2 anybody.

3 THE CHAIRMAN: You just cannot talk to
4 anyone, you are still under cross-examination, that's
5 correct.

6 Thank you, ladies and gentlemen, and I
7 would like to offer a special thanks to the court
8 reporters; you, Mr. Williams; and certainly everybody
9 else for putting up with the very lengthy day.

10 But, again, the Board is determined to
11 keep this hearing moving as expeditiously as possible.

12 Thank you.

13 ---Whereupon the hearing adjourned at 9:30 p.m., to be
14 reconvened on Monday, November 14th, 1988,
15 commencing at 1:00 p.m.

16 (Copyright, 1985)

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